



THE RULINGS OF MARRIAGE

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الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ خَاتَمِ
النَّبِيِّينَ وَالْمُرْسَلِينَ، وَسَلَّمْ تَسْلِيمًا وَنَسْأَلُ اللَّهَ تَعَالَى أَنْ
يُصْحِبَنَا الْعِصْمَةَ مِنْ كُلِّ خَطِيئَةٍ وَزَلَلٍ، وَيُوفِّقَنَا لِلصَّوَابِ فِي
كُلِّ قَوْلٍ وَعَمَلٍ. آمِينَ آمِينَ.

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Issue: Marriage is Recommended

Marriage is recommended only, not obligatory.

As for what ‘Abd Allāh ibn Mas‘ūd narrated: “The Prophet ﷺ said to us: ‘O assembly of youth! Whoever among you is able to afford al-bā’ah, let him marry. And whoever is unable, then let him fast, for it is a protection for him.’”¹

And as for what Sa‘d ibn Abī Waqqāṣ narrated, “‘Uthmān ibn Maz‘ūn wanted to abstain from marriage (tabattul, abandoning marriage), but the Messenger of Allah ﷺ prohibited him from that.”²

These orders are not upon obligation.

The decisive evidence for this is the saying of Allāh, “And if you fear that you will not deal justly with the orphan girls, then marry women from your choice, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hands possess (slaves). That is more suitable that you may not incline [to injustice].” [al-Nisā’: 3]

If it is said, “This permissibility is abrogated by the order to marry.”

We say: Allāh here ordered marrying then followed that up with giving us the choice: the women as we want. So the order is not an obligation, an obligation is not what we are allowed to have a choice in. And also, the āyah makes takhṣīṣ of the amount of women that are permissible, and is also itself makhṣūṣ from what is more general than it. So it is not upon the aṣl, as all of this is established it is not a place of abrogation from any angle.

If it is said, “This recommendation only applies if we fear being unjust with the orphans.”

¹ Ṣaḥīḥ Muslim 1400, 1: Ṣaḥīḥ

² Ṣaḥīḥ Muslim 1402, 6-7: Ṣaḥīḥ

We say: This is a claim about the verse no one preceded in saying, everyone is in agreement that Allah's order for us to marry as we want from the women is an independent sentence.

Ahl al-Lughah have said that, "And if you fear that you will not deal justly with the orphan girls," in the verse is a condition (shart).

And that, "Then marry women you want, two or three or four," is an interruption (i'tirād), not an answer (jawāb) of the condition mentioned.

And that, "But if you fear that you will not be just," is a second condition that is about women in general, not orphan girls.

And that, "Then [marry only] one," and what comes after it is the answer to the first and second condition.

And others among them have said that, "And if you fear that you will not deal justly with the orphan girls," is not an i'tirād but is in any case not an answer for the first condition mentioned. So in any case it is an independent sentence, so it is established in any case that it is not specific to the situation of fearing being unjust with the orphans.

And what indicates the correctness of this even further is that Ahl al-Islām except the rawāfiḍ have concurred on the prohibition of marrying more than four wives, and there is not a single indication in Qur'ān and authentic sunnah for the prohibition of marrying four wives other than this verse.

If it is said, "What about the narration in which the Prophet ordered the man that had ten wives to choose four?"³

We say: This is an order that does not exist anymore because it is prohibited to have more than four wives. That which the people were upon in the situation of this narration was in accordance with the situation that was abrogated: not abandoning marrying more than four wives, what the one that entered Islām was upon in the narration had more than four wives, because they had married the women which was not prohibited for them, then when the prohibition was revealed they

³ Sunan al-Tirmidhi 1128: Ṣaḥīḥ

chose four among them. Anyone who, after the prohibition, initiates a marriage with a fifth woman or more, or married more than four at the same time, or married two sisters, or a woman and her daughter, has disobeyed Allāh, the Almighty, and performed an act that is not permitted by Him. So, such an act is invalid, and the contract is void and annulled. And the ones only after the fourth are invalid. This establishes the cessation of the order for choosing four, as it was only applicable to anyone who had already married more than four before the prohibition was revealed. And also, if the obligation to choose four wives would apply to someone who marries five during their state of disbelief after the prohibition was revealed, it does not permit such a choice for someone who enters Islām while married to two sisters or two prohibited relatives.

If it is then said, “How does this verse indicate the prohibition of marrying more than four wives, if the person is given a personal choice and you believe this not to be an obligation?”

We say: Allāh Almighty said, “It is He who created for you all of what is on the earth” [Al-Baqarah: 29].

There is no text more general or more comprehensive than this, permitting all women, such as copulating them in any state, foods, and everything on earth. This is the most general verse.

But then Allah in a less general manner said, “Tell the believing men to lower their gaze and guard their private parts” [An-Nūr: 30].

There is no text after the previous text more general than this second one. If no other text existed other than these two, marriage and all forms of sexual intercourse would be entirely prohibited, and all women would be excluded from being entirely permitted from what the most general first text that permits.

Then Allāh said, “Then marry women from your choice, two or three or four.” [An-Nisā’: 3]

This permits what the earlier text, which included the obligation of guarding the private parts would have prohibited, if this verse would not exist, it would be obligatory to take from the prohibition, because

the prohibition is an additional order. So it is obligatory to restrict it to what the text specifically permitted from the general prohibition, so more than four wives are not allowed.

Issue: Marrying More Than Four Women

The clarification about the prohibition of marrying more than four has just preceded, and this prohibition applies whether they are free women (ḥarā'ir) or slave women (imā'), or a combination of both. A free man or a slave can take as many concubines as he is able. Both the free man and the slave are equal in this, whether out of necessity or otherwise. But abstaining from marrying a slave woman is better for a free man.

So as it is established based on what preceded that marrying more than four is prohibited, what remains to be clarified in this chapter is the marriage of a free man to a slave woman, how many wives a slave man can marry, and whether a slave can take a concubine.

As for the marriage of a free man to a slave woman: The people have differed on this matter.

It has been narrated through Sa'īd ibn Manṣūr from Ismā'īl ibn Ibrāhīm, from someone who heard al-Ḥasan say: "The Messenger of Allah ﷺ prohibited marrying a slave woman when he has a free woman."⁴

This narration is munqaṭi' in two places, between Ismā'īl ibn 'Ulayyah and it is mursal from al-Ḥasan, so it is false.

As for giving the free woman the choice to either stay with her free husband or separate from him if he marries a slave woman alongside her, this is a false saying; there is no evidence for its validity at all.

As for al-Shāfi'ī prohibiting against marrying a slave woman for the one who has the means to marry a free woman from the People of the Book, then this is a statement that the verse does not necessitate,

⁴ Sunan Sa'īd ibn Manṣūr 741, 1/229: Ḍa'īf

so all these sayings fall away as they are not in the Qur'ān and also not in any of the Sunnahs.

As there is a difference, it is obligatory to only return to the ruling of Allah and his Messenger.

Allah said, “And whoever among you cannot afford to marry chaste believing free women, then [he may marry] from those whom your right hands possess of believing slave women. And Allah knows best your faith – you are from one another. So marry them with the permission of their people and give them their due compensation according to what is acceptable – they should be chaste, not those who commit unlawful intercourse or take lovers. But once they are sheltered in marriage, if they commit indecency, then their punishment is half of that for chaste free women. That is for him among you who fears falling into sin. But to be patient is better for you.” [al-Nisā': 25]

So we look at what this verse necessitates, and we find within it the ruling regarding one who cannot afford to marry a free woman and fears falling into sin (‘anat). It permits him to marry a believing slave woman, while also recommending patience, and that it is better for us. That is all as we say.

Then we look at the ruling about the one who can afford marriage to a free woman and does not fear sin, and the case of a Muslim marrying a slave woman from the People of the Book, and we find that this is not ruled at all in the verse, not by a permissibility, also not a prohibition, and also not a dislike. Instead, the verse is completely silent about it. So it is not permissible to rule this with the ruling of the one who cannot afford a free woman and fears sin, and also not the ruling about a believing slave woman, because that is qiyās from the unmentioned to what is mentioned in the verse and qiyās is false.

And it is not allowed to give it a ruling that is opposite to the ruling of the one who cannot afford and fears sin, and also not that of the believing slave woman, because this is not in the verse, both are a transgression against what is in the verse, and adding into it something that is not part of it.

So it is obligatory to seek the ruling for the one who can afford and does not fear sin.

So we find that Allah says, “This day [all] good things have been made lawful for you. And the food of those who were given the Scripture is lawful for you, and your food is lawful for them. And [lawful in marriage are] the chaste women from among the believing women and the chaste women from among those who were given the Scripture before you, if you give them their due compensation.” [al-Mā'idah: 5]

And we find that Allah also says, “And marry off those among you who are single, and the righteous among your male slaves and female slaves. If they are poor, Allah will enrich them from His bounty.” [al-Nūr: 32]

So there is in this verse clear clarification that marriage to the women of the People of the Book is entirely permissible. Allah did not specify between a free woman and a slave woman. And in the other verse, He permitted the marriage of male believing slaves in general, without specifying between marrying a free woman or a slave woman. And the permissibility of marrying off female Muslim slaves, without specifying a free man from the slave. So these two verses are a clarification of the marriage of a rich and poor Muslim, slave or free, to a Muslim free woman, or woman of the People of the Book, and to a Muslim slave woman or a slave woman from the People of the Book, all of it is permissible in every case. And it has never come in the Sunnah or the Qur'ān that any of this was ever prohibited, or disliked. So the matter is established with certainty, and there is no ambiguity in it.

As for how many women a male slave can marry: And Allah the Exalted said, “Then marry those that please you of the women, two, three, or four.” [al-Nisā': 3]

He did not specify a free man over a slave, so both are equal in that. And with Allah the Exalted is success.

As for the male slave taking a concubine, we find that Allah the Mighty and Majestic says, “And those who guard their private parts. Except from their wives or those their right hands possess, for indeed they are not blameworthy.” [al-Mu’minūn: 6]

He did not specify a free man over a slave.

And we have already clarified in another chapter about the validity of the slave’s ownership of property in general, so there is no need to repeat it. And with Allah the Exalted is success.

Issue: Intercourse With Slave Girls and Marriage with the Kitābiyyah Woman

It is not permissible for a Muslim man to have intercourse with any kāfirah woman through slavery, whether kitābiyyah or other than a kitābiyyah. It is only allowed to have intercourse with her after she becomes a Muslimah.

It is only permissible for a Muslim man to have intercourse with a kitābiyyah, that is, a Jewish woman, a Christian woman, or a Magian woman, through marriage only.

And it is not permissible for him to marry a kāfirah woman who is not from the People of the Book, which are the three mentioned.

Abū Ḥanīfah, Mālik, and al-Shāfi‘ī permitted intercourse with a Jewish or Christian woman by slavery and Mālik prohibited marrying the Jewish or Christian slave⁵.

So it is obligatory to return to the Qur’ān and Sunnah only. We find that Allah the Exalted says, “Do not have nikāḥ polytheist women until they believe.” [al-Baqarah: 221]

Had there been no text other than this, it would be prohibited to marry any mushrikah.

⁵ Al-Mabsūṭ of al-Shaybānī 10/216 | Al-Umm 5/9 | Al-Mudawwanah 2/219

But Allah said, “This day [all] good things have been made lawful for you. And the food of those who were given the Scripture is lawful for you, and your food is lawful for them. And [so are] the chaste women (muḥṣanāt) from among the believers and the chaste women from (muḥṣanāt) those who were given the Scripture before you, if you give them their dowry.” [al-Mā'idah: 5]

The obligation is obedience to both verses, and one must not be abandoned for the other. So there is no way to obey both verses except by making an exception from the more general prohibition, so it becomes obligatory to exclude the permission of marrying chaste women from among the People of the Book from the general prohibition against polytheist women. The remaining, other than the women from the People of the Book, remain under prohibition under the verse of before, and nothing else is permissible other than this.

So the claim of Mālik and al-Shāfi'ī prohibiting marriage to a kitābiyyah slave woman opposes the verse mentioned because Allah called them muḥṣanāt and she is then within the generality of muḥṣanāt among those given the Book. Because iḥṣān is freedom (ḥurriyyah) and iḥṣān is also chastity ('iffah).

Allah the Exalted said, “And Maryam, daughter of 'Imrān, who guarded her chastity,” [al-Taḥrīm: 12] meaning she guarded her private part (was chaste).

It is not permissible for anyone to specify the saying of Allah, “And the chaste women (muḥṣanāt) from those who were given the Scripture before you,” [al-Mā'idah: 5] specifically to free women without chaste slave women (īmā'), because he is then speaking about Allah without knowledge, legislating in the religion that which Allah did not permit, and claiming without decisive evidence and this is prohibited.

Allah the Exalted said, “Say: Bring your proof if you are truthful.” [al-Baqarah: 111]

And He said, “And that you say about Allah that which you do not know.” [al-Baqarah: 169]

So whoever has no decisive evidence for the validity of his saying, then his saying is false.

We have already clarified them clinging unto Allah's saying, "From among your believing slave girls." [al-Nisā': 25]

That this only indicates the permissibility of marrying believing slave girls and that there is not in it a prohibition and also not a permissibility about kitābiyyah slave girls. So the clarification must be sought from other than this verse.

And we find that them permitting intercourse with the kitābiyyah slave girls is them inserting by their ra'ī to the verse what is not in it.

Because Allāh only allowed kitābiyyāt women by making an exception in the verse by allowing them specifically through marriage only, by His words, "If you give them their due compensation." [al-Mā'idah: 5]

Everything else remains prohibited by His order, "Do not have nikāḥ with the mushrikāt (disbelieving women) till they believe." [al-Baqarah: 221]

So intercourse with all slave women is prohibited except if they afterwards become Muslimah.

And the kitābiyyāt among them are only allowed by means of marriage, this is all by the exact words of Allāh.

If they say: "That verse in al-Mā'idah: 5 is only about marrying them, not intercourse with slave girls."

The answer: This is false, nikāḥ in the Arabic language has two ḥaqīqī meanings that are not majāz which is intercourse and the marriage contract. Whoever claims that only one is the ḥaqīqī meaning has no decisive evidence in his hands. So whoever does not take both meanings has made takhṣīṣ from a general word without any evidence. There is nothing indicating that it is only one of them.

There is no verse from the Qur'ān, and no authentic Sunnah from the Messenger of Allah ﷺ permitting intercourse with a kitābiyyah slave woman.

So they remove from the verse what is explicitly in it, from the permissibility of marrying chaste kitābiyyāt, with no difference between a free woman and slave woman and insert into it what is not in the verse or anywhere else from the permissibility of intercourse with a kitābiyyah slave woman.

If they mention the narration from ibn Muḥayrīz, “I saw Abū Sa‘īd and asked him about coitus interruptus. Abū Sa‘īd said: ‘We went with the Prophet ﷺ, in the Ghazwa of Banī al-Muṣṭaliq and we captured some of the Arabs as captives, and the long separation from our wives was pressing us hard and we wanted to practice coitus interruptus (‘azl). We asked Rasūlullāh ﷺ (whether it was permissible). He ﷺ said, ‘It is better for you not to do so. No soul, (that which Allah has) destined to exist, up to the Day of Resurrection, but will definitely come into existence’”⁶

The answer: There is no ḥujjah for them in this, because there is no mention in any of this what was done with the slave girls. And Abū Sa‘īd who is also in this narration himself prohibited intercourse with slave girls from Ahl ul-Kitāb, there is no mention in this narration from the Prophet ﷺ whether he allowed it or prohibited it. Then how when it is possible that the slave girls accepted Islām and it becomes then permissible as clarified. And even if that would not be the case then without any doubt everything is allowed till the prohibition for it is revealed, we then know that this narration is abrogated if it would indicate its permissibility and its nāsikh is the verse.

And we also say them: It is also not mentioned in this narration that the Prophet ﷺ prohibited them from having intercourse if those slaves are menstruating.

If they say: “We know the prohibition for that because of other narrations or verses.”

⁶ Ṣaḥīḥ al-Bukhārī 2542: Ṣaḥīḥ

We say: In this same manner we also know from other texts from the Qur‘ān and Sunnah that it is not allowed to have intercourse with slave girls except if they accept Islam as clarified.

If we were people of tumult like them we would mention as ḥujjah the narration of al-Ḥasan, “We used to raid with the companions of the Prophet ﷺ, when any of us would get hold of a slave girl from the fay’ he would order her to wash her clothes, teach her Islām, order her to pray and wait for a period and then have intercourse with her.”⁷

Which is our exact saying. But we seek refuge in Allāh from attributing to the religion what is not acknowledged by the Prophet ﷺ.

And if they mention the narration from Abū Sa‘īd al-Khudrī, that he said: “At the Battle of Ḥunain, the Prophet ﷺ sent an army to Awṭās and encountered the enemy and fought with them. Having overcome them and taken them captives, the Companions of the Prophet ﷺ seemed to refrain from having intercourse with captive women because of their husbands being polytheists. Then Allah sent down regarding that: ‘And the women already married, except those whom your right hands possess’ [4:24]. Meaning: they are permissible for you if their ‘iddah period comes to an end.”⁸

The answer: The captives of Awṭās were idolatresses, they were not from Ahl ul-Kitāb, and there is no difference that it is prohibited to have intercourse with an idolatress who is a slave, except if they accept Islām. And the clarification that preceded on the narration before applies to this one as well. There is only in this narration that the ‘iddah is among the conditions, the mother and sister are prohibited to have intercourse with by means of slavery because they are the most specific prohibitions, they concur on this. And also the menstruating woman and others. What is not mentioned is not negated, all rulings must be added to each other, so in this manner the obligation of Islām before intercourse with the slave woman remains.

⁷ Al-Muṣannaf of ‘Abd al-Razzāq 12753, 7/196: Ṣaḥīḥ

⁸ Ṣaḥīḥ Muslim 1456, 33: Ṣaḥīḥ

If they mention the verse: “Then only one or (the slaves) that your right hands possess” [4:3].

And they say: “Allah allowed everything in general with the slaves.”

The answer: Then according to you it is allowed to have intercourse with menstruating slaves, and the sister, mother, mother of the wife, one of the wives of the father from breastfeeding.

If they say: “Other texts indicate the prohibition for that.”

We say: Other texts as clarified before indicate the prohibition of intercourse with slave girls that are not Muslims

If they mention the narration attributed to the Prophet ﷺ, “Intercourse with captives is prohibited till they give birth.”⁹

This is weak, it has not come except through Umm Ḥabībah bint ‘Irbāḍ ibn Sāriyah and she is majhūlah.

And if they mention the narration attributed to the Prophet ﷺ, “It is not allowed for the one that believes in Allah and the last day to have intercourse with his captives till she finishes one menstruation cycle.”¹⁰

This is also weak, it has not come except through Muḥammad ibn Ishāq and he is weak.

And we clarified before that not all rulings are mentioned in one incident. The same with these two narrations, all of them agree that it must be combined as it is not allowed to take one narration, but abandon the other. If their method would be applied, then according to them it is allowed to have anal intercourse with slaves as it is not mentioned in the narration, which they prohibit, and intercourse while they are menstruating, and with the sister, mother, mother of the wife, one of the wives of the father from breastfeeding.

Selling a contracted slave or slave girl who pays a price for his freedom as long as they have not paid off anything from their contract is allowed whenever the master wants. It is allowed to have intercourse

⁹ Sunan al-Tirmidhi 1564: Ḍa‘īf

¹⁰ Sunan Abī Dāwud 2158: Ḍa‘īf

with a contracted Muslim slave girl as long as she did not pay anything for her freedom, whether she is pregnant or not she remains with her contract. If she is sold then the contract is false, if she returns to the former slave owner, then there is no new contract except if it is renewed, if the slave girl requests it. If she pays again anything from it whether the amount is much or less then it is not allowed to ever have intercourse with her. This is because a slave is only freed according to the amount that is paid off from their contract. The moment some of the contract is paid some of the slave is free and it is not allowed to have intercourse with a free Muslim woman except through Nikāḥ.

As for the permissibility of marrying the Magian women, then they are from Ahl al-Kitāb.

The Prophet ﷺ took jizyah from the Majūs of Hajar and Baḥrayn¹¹. And Allah prohibited taking jizyah from anyone other than Ahl al-Kitāb.

If someone says, “They are not Ahl al-Kitāb but jizyah with them is allowed.”

The answer: This is a false takhṣīṣ and deceptive because anyone who makes such an ‘exception’ without any doubt associates some rulings of Ahl al-Kitāb with the Majūs, like allowing them to live, forcing them to be humiliated, and obliging them to pay the same amount for jizyah. Because jizyah, in language, is nothing other than mere money for a treaty, and it is not known what the treaty with the Majūs consists of at all, from whom the Prophet ﷺ took jizyah if they merely declare it an independent exception. So it is without any doubt mujmal, and the only mubayyan for this is that they are part of Ahl al-Kitāb, there is nothing else possible.

Some people only said what they said about those who rule them among Ahl al-Kitāb without any evidence except for weak narrations attributed to the Prophet ﷺ regarding this.

¹¹ Ṣaḥīḥ of al-Bukhārī: 3156, 3157 4/96: Ṣaḥīḥ

So if they argue by what is attributed to al-Ḥasan ibn Muḥammad ibn ‘Alī that he said, “The Messenger of Allah ﷺ wrote to the Majūs of Hajar, offering them Islām. Whoever accepted it, it was accepted from him, and whoever refused, jizyah was imposed upon him, on the condition that their slaughtered animals not be eaten and their women not be married.”

Then this is as you can see mursal, and there is no ḥujjah in a mursal narration.

Issue: The Marriage of a Muslim Woman to a Non-Muslim

It is prohibited at all for a Muslim woman to marry a non-Muslim. And it is also prohibited for a kāfir to own a Muslim slave, whether male or female, at all.

The decisive evidence of this is the saying of Allah, the Mighty, “And do not marry off [your women] to the polytheists until they believe.” [al-Baqarah: 221]

And the saying of Allah, the Exalted, “And Allah will never give the disbelievers any way over the believers.” [al-Nisā’: 141]

And slavery is the greatest way, and Allah has nullified it from disbelievers over Muslims entirely in general.

Whoever opposes us on this by allowing the sale of a Muslim slave, male or female, while he or she is in the ownership of a kāfir if they became Muslims while they already were enslaved, in the ownership of a kāfir.

We say to them: What do you say about the length of time you expose the Muslim male or female slave to being sold after their Islām while still under the ownership of the kāfir? That time can be one hour, or it might be a year. Are they under the ownership of the kāfir during that time or not? There is no third possibility. If you say they remain in his ownership, then why do you prevent him from maintaining that

ownership permanently when you already allowed it for a period of time? What is your decisive evidence for this false difference?

But if you say: “They are not in his ownership and also not in the ownership of anyone else.”

We say: That is the description of freedom. And whoever is described with that then it is not allowed to sell him or to establish ownership over him.

The Messenger of Allah ﷺ freed anyone who came to him from among the slaves of the disbelievers as Muslim.

So your takhṣīṣ that only those who came to us from them are freed ruling falsely without evidence because the Prophet did not say, “I only free you because you came to me,” so it is not allowed to say about him what he did not say.

If it is said, “Abū Bakr purchased Bilāl from a kāfir after his (Bilāl’s) Islām.”

We say: That was in Makkah, at the beginning of Islām, before the verses we mentioned were revealed, just like it is attributed to the Prophet ﷺ that he married his daughter to Abū al-‘Āṣ ibn al-Rabī‘ while he was still a kāfir, and to ‘Uqbah ibn Abī Lahab, if these would be authentic, then it is before the prohibition of that was revealed. So it is established that the male and female slave, if they become Muslims while they are enslaved by a kāfir, then they are free the moment they became Muslims.

Issue: The Walīmah (Feast) after the Marriage Contract

It is obligatory Upon everyone who gets married to have a walīmah, whether it is with little or much. Walīmah in the language is a man and woman gathering, which is after the marriage contract, it can be before or after the intercourse. As walīmah occurs on the marriage contract (imlāk), and also on the intercourse (i‘rās) after the contract. And this

obligation for the marriage is upon the man, not upon the woman. If the woman does it on behalf of the man, it is invalid.

The decisive evidence for everything mentioned is what Anas ibn Mālik narrated, “The Messenger of Allah ﷺ saw traces of yellow (perfume) on ‘Abd al-Raḥmān ibn ‘Awf, and said: ‘What is this?’ He replied: ‘O Messenger of Allah, I have married a woman for the weight of a date stone in gold.’ The Messenger of Allah ﷺ said to him: ‘Make a walīmah, even if only with a sheep.’”¹²

As for the permissibility of delaying it after the marriage contract till after the intercourse, even if there is a long time for that taking place, The Prophet ﷺ said, “If any of you is invited to an ‘urs walīmah, then let him respond.”¹³

So this a naṣṣ about the walīmah after the i‘rās.

And Anas ibn Mālik, mentioning the marriage of the Messenger of Allah ﷺ to Ṣafiyyah, Mother of the Believers, he said, “The Prophet ﷺ stayed between Khaybar and al-Madīnah for three days, consummating his marriage with Ṣafiyyah ibn Ḥuyayy. I invited the Muslims to his walīmah, and there was no bread and also no meat in it. He ordered that leather mats be spread out, and dates, dried yogurt, and clarified ghee (samn) were placed on them and that was his walīmah.”¹⁴

Issue: Responding to Walīmah Invitations

It is an obligation upon everyone who is invited to a walīmah or any food invitation to attend, unless they have a valid excuse. If the person is not fasting, then it is obligatory for him to eat. If he is fasting, then he must make du‘ā’ for them and attend. If there is spread-out silk, or

¹² Ṣaḥīḥ Muslim 1427, 79: Ṣaḥīḥ

¹³ Ṣaḥīḥ Muslim 1429, 96: Ṣaḥīḥ

¹⁴ Ṣaḥīḥ al-Bukhārī 5085: Ṣaḥīḥ

the house taken by false means, or the food is taken by false means, or there is khamr apparent then he must return and not sit there.

‘Abd Allāh ibn ‘Umar narrated, “The Messenger of Allah ﷺ said: ‘Respond to the invitation when you are invited.’”¹⁵

Ibn ‘Umar narrated from the Prophet ﷺ, “If your brother invites you, then respond to him whether it is a wedding or the like of it.”¹⁶

And Abū Hurayrah narrated, “The Messenger of Allah ﷺ said: ‘If any of you is invited, then let him respond. If he is fasting, let him supplicate [for them], and if he is not fasting, then let him eat.’”¹⁷

So it is obligatory upon the one fasting to attend as well and supplicate, and he is not obliged to eat.

The narrations have come with the wording of *ijābah*, which is complying/fulfilling a call/request, not *jawāb* which is merely any answer in general which can be a negation.

As for our saying that the only obligation is fulfilling the request of attending a *walimah*, any *walimah*, whether for marriage or others. This is because it is known with necessary knowledge that it is not obligatory to fulfill every single request of a Muslim, and the ruling of the chapter applies to any *walimah*, whether for marriage, which is before the ‘*urs* (intercourse), after the contract, or after the ‘*urs*. As *walimah* in the language occurs on any gathering, whether that is for marriage or other than a marriage.

And the Prophet ﷺ said, “If any of you is invited to a *walimah*, then let him attend it.”¹⁸

If it is said, “But has it not come in some narrations: ‘If any of you is invited to an ‘*urs walimah*, then let him respond.’”¹⁹

We say: Yes, and the specification of ‘*urs* here is not a negation of what is in the previous narration and there is no necessity obliging

¹⁵ Ṣaḥīḥ Muslim 1429, 103: Ṣaḥīḥ

¹⁶ Ṣaḥīḥ Muslim 1429, 100: Ṣaḥīḥ

¹⁷ Musnad Aḥmad 10585, 16/344: Ṣaḥīḥ

¹⁸ Ṣaḥīḥ al-Bukhārī 5173: Ṣaḥīḥ

¹⁹ Ṣaḥīḥ Muslim 1429, 96: Ṣaḥīḥ

this specification. And the ziyādah of the thiqah must be accepted. The other narrations are then additions which oblige attending any walimah, whether after a marriage contract or for a walimah unrelated to marriage, a walimah in the language is not only related to marriage.

As for it not being obligatory to eat from it, Jābir from the Messenger of Allah ﷺ that he said: ‘If any of you is invited to food, then let him respond. If he wishes, he may eat; and if he wishes, he may leave it.’”²⁰

And Abū al-Zubayr heard this from Jābir²¹.

As for the narration attributed to the Prophet ﷺ, “Whoever enters without an invitation enters as a thief.”²²

This is weak; Abān ibn Ṭāriq al-Baṣrī is not a thiqah, and Durust ibn Ziyād is weak.

As for the narration attributed to the Prophet ﷺ, “If any of you is invited and he comes along with the messenger, then that is permission for him.”²³

This is weak, it has not come except from ‘Ayyāsh ibn al-Walīd, who is majhūl, and ‘Abd al-Wahhāb ibn al-‘Aṭā’.

Issue: A Woman’s Marriage Is Not Permissible and Invalid Without the Permission of Her Walī

It is prohibited and invalid for a woman to marry, whether she is previously married (thayyib) or never married before (bikr) except with the permission of her walī: her father, brothers, grandfather, paternal uncles, or paternal cousins, and those further in that, the closest one to her precedes.

²⁰ Ṣaḥīḥ Muslim 1430, 105: Ṣaḥīḥ

²¹ Sharḥ Mushkil al-Āthār 3030

²² Sunan Abī Dāwūd 3741: Ḍa‘īf

²³ Sharḥ Mushkil al-Āthār 1587, 4/259: Ḍa‘īf

A woman's son is not her walī except if he (the son) is the son of her paternal uncle and there is no one among her relatives closer to her than him.

And the meaning of that is that they permit her to marry, if her awliyā' refuse from allowing her to marry, then the ruler marries her off. If there is certainty that the ruler or those appointed by him cannot be found or reached, then the one closest to that description marries her off. And the walī being merely absent does not remove him as a walī no matter how long it takes.

If she agrees with the walī then no other walī replaces him and she does not marry him. But if there is dispute then another walī does it.

The decisive evidence for this is the saying of Allah ﷻ, "And marry off the single among you, and the righteous among your male and female slaves." [al-Nūr: 32]

And the saying of Allah, "And do not marry off the polytheists until they believe." [al-Baqarah 2:221]

These verses are addressed to the awliyā', not to the women themselves.

And the awliyā' in the language are the father, brother, uncle, and all of the 'aṣabah²⁴.

And 'Ā'ishah narrated from the Prophet ﷺ, "A woman must not be married off without her walī. If she is married (without a walī), then her marriage is false, false, false. If he has intercourse with her (after such a marriage), she is entitled to her mahr (dowry) for what he has taken from her. And if they dispute, then the ruler is the walī of the one who has no walī."²⁵

A group raised an objection about the ḥadīth narrated from 'Ā'ishah, because ibn 'Ulayyah narrated from ibn Jurayj that he asked al-Zuhrī about this ḥadīth, and that al-Zuhrī did not recognize it.

²⁴ Gharīb al-Ḥadīth of Abū 'Ubayd 2/592

²⁵ Musnad Aḥmad 24205, 40/243: Ṣaḥīḥ

They say, “‘Ā’ishah narrates this ḥadīth, but it is established from her that she married off her paternal (daughter of her brother), ‘Abd al-Raḥmān while she was a virgin and he was traveling in al-Shām, without his order. When he did not continue it, he rejected it. And ‘Ā’ishah did not see that action nullifying the marriage. She said to the one whom she married her who was al-Mundir ibn al-Zubayr to convey the matter to him, and he did, and ‘Abd al-Raḥmān approved.”²⁶

And they say, “It was al-Zuhri from whom this narration was narrated. Then you narrated from the ṭarīq of ‘Abd al-Razzāq from Ma‘mar that he said he asked al-Zuhri about a man marrying without a walī, to which al-Zuhri responded: ‘If he is a suitable match for her, they should not be separated.’”²⁷

And they say, “If that narration is authentic, it would indicate a contradiction between ‘Ā’ishah’s narration from the Prophet ﷺ and what al-Zuhri narrated.”

The answer: As for your saying that Ibn Jurayj asked al-Zuhri about the narration and he did not recognize it²⁸.

This is nothing for two reasons, ‘Abbās said, “Yaḥyā ibn Ma‘īn narrated to us the Ḥadīth of Ibn Jurayj. So I said to him: ‘Ibn ‘Ulayyah said to Sulaymān ibn Mūsā?’ He replied, ‘I have since forgotten.’ Ibn Ma‘īn said: ‘No one says this except Ibn ‘Ulayyah, and Ibn ‘Ulayyah presented the books of Ibn Jurayj to ‘Abd al-Majīd ibn ‘Abd al-‘Azīz ibn Abī Rawwād, and he corrected them for him.’ Ibn Ma‘īn said: ‘Nothing is authentic in this except the ḥadīth of Sulaymān ibn Mūsā.’”²⁹

So it is established that the hearing of Ibn ‘Ulayyah from Ibn Jurayj is valid. Then, even if it would be authentic that al-Zuhri rejected it, and that Sulaymān ibn Mūsā had forgotten it, we have narrated from

²⁶ Ma‘rifah al-Sunan wal-Āthār 13522, 10/32

²⁷ Al-Muṣannaf of ‘Abd al-Razzāq 10472, 6/196

²⁸ Sharḥ Ma‘ānī al-Āthār 3/8

²⁹ Tārīkh al-Dūrī 361, 3/86 | 1089, 3/232

‘Ā’ishah who said, “The Prophet ﷺ once heard the recitation of a man in the masjid and said: ‘May Allah have mercy on him, he has reminded me of an āyah which I had been caused to forget.’”³⁰

As it is established that the Messenger of Allah ﷺ forgot an āyah from the Qur’ān, then who are al-Zuhrī, Sulaymān, and Yaḥyā that they should not forget? And Allah, Mighty and Majestic, said, “And We had already made a covenant with Ādam before, but he forgot.” [Tā Hā: 115]

But ibn Jurayj is a thiqah, so if he narrates to us from Sulaymān ibn Mūsā, who is also a thiqah that he informed him from al-Zuhrī with a musnad narration, then the ḥujjah is established by it, whether they forgot it after conveying and narrating it, or did not forget it.

Indeed, Abū Hurayrah forgot the ḥadīth of “No contagion,”³¹ and al-Ḥasan forgot the ḥadīth of “Whoever kills his slave,” and Abū Muḥammad, the mawla of Ibn ‘Abbās, forgot the ḥadīth of the takbīr after the ṣalāh after narrating it from the Prophet ﷺ³². So what of it? None objects to this except an ignorant person or one who repels the truth with falsehood. And it is not known where in the Qur’ān, and the Sunnahs, or in which ‘aql judgment they found that if someone narrates a ḥadīth and then forgets it, the ruling of that narration becomes invalid. They are in nothing but a false claim without decisive evidence.

As for their objection that it is authentically narration from ‘Ā’ishah and from al-Zuhrī that they opposed what they had narrated of this matter, so what? Allah, Mighty and Majestic, and the Messenger of Allah ﷺ ordered us to accept what reaches from him, and then the ḥujjah of the ‘aql establishes, that it is obligatory to accept what is authentic with us from the Messenger of Allah ﷺ, and that it is not obligatory to follow the saying of anyone other than him ﷺ.

And it is not known where they found that if someone by way of mistaken ijtihād and ta’wīl opposes what he narrated from the

³⁰ Ṣaḥīḥ Muslim 877, 225: Ṣaḥīḥ

³¹ Ṣaḥīḥ Muslim 2221, 104

³² Ṣaḥīḥ Muslim 583, 121

Prophet ﷺ, then what he narrated from the Prophet ﷺ is by that nullified. Instead, we reverse upon them this corrupt principle of theirs and say: If it is authentic that the Mother of the Believers and al-Zuhri narrated this narration, and it is narrated from them that they opposed it, then the assumption about them is that they did not oppose what they narrated from the Prophet ﷺ, and this is more appropriate. Because abandoning what is not obligatory upon us of their ra'ī for what is obligatory upon us of their narration from the Prophet ﷺ is what is obligatory, not abandoning what is obligatory upon us from what they narrated from the Prophet ﷺ for what is not binding upon us of their ra'ī.

They also object about the narration of Abū Mūsā, saying that some people had sent him.

We say: So what? If the narration is authentic and musnad to the Messenger of Allah ﷺ, then the ḥujjah is established by it, and it is obligatory for us to accept it. There is no significance to who sent it, or to one who did not narrate it at all, or to one who narrated it through another weak ṭarīq. All of this is as if it never was.

Then there are some disagreements which must be returned to the Qur'ān and authentic Sunnah:

Some allowed any Muslim marrying off the woman.

Some allowed marriage without the permission of the walī.

Al-Awzā'ī said: "If the husband is equal to her and she has some authority over her own affair, and he consummated the marriage with her, then the walī has no right to separate them."³³

Abū Thawr said: "It is not permissible for a woman to marry herself off, and also not for another woman to marry her off. But, if a Muslim man marries her off, it is valid the believers are brothers, walī of one another."³⁴

Abū Sulaymān, "As for a virgin, none marries her off except her walī, as for a woman who had married before, she may appoint

³³ Mukhtaṣar Ikhtilāf al-'Ulamā' 2/247

³⁴ Al-Awsaṭ of ibn al-Mundhir 8/269

whomever she wishes from among the Muslims to take care of her affair and he can marry her off, and the walī has no right to object in that.”

Mālik said, “As for the woman of low status/defective, such as a black woman, or the one that (just) became Muslimah, or a poor woman, or a Nabataean woman, if she is married off by a neighbor or another who is not her guardian, it is valid. But as for a woman of high status, if someone other than her walī marries her off, they must be separated. If the walī or the ruler approves it, it is valid. And if the matter remained (invalid) long like that and is not annulled, and she has borne him children, we do not annul it.”³⁵

Abū Ḥanīfah and Zufar said, “It is permissible for a woman to marry herself off to a man that is equal to her, and her walī has no right to object to that. If she marries herself off to the one that is not equal to her, the marriage is valid, but the walī can separate them. And the walī can dispute in matters where she has reduced her dowry below what is customary for women equal to her.”³⁶

As for the saying of Abū Ḥanīfah, they are statements that have no basis in the Qur’ān, and also not in any authentic or weak Sunnah. Such sayings that are against the ‘aql are not accepted except from the Messenger of Allah ﷺ, who does not speak from desire but only from revelation from the Creator, who is not asked about what He does. As for anyone other than him ﷺ, then this is a new religion by which Allah will punish in the Gathering.

As for the saying of Mālik, it is corrupt, he differentiated between the lowly and the non-lowly, and lowliness is not known except through disobedience to Allah.

As for the black woman or the mawlāh, Umm Ayman was both black and a mawlāh, and by Allah, after the wives of the Prophet ﷺ, there was no woman in this Ummah higher in status with Allah Ta‘ālā and with all the people of Islam than her.

³⁵ Al-Mudawwanah 2/106-118

³⁶ Al-Aṣl of Muḥammad ibn al-Ḥasan 10/198-199

As for the poor woman, poverty is not lowliness. Among the prophets there were those whom poverty destroyed, but they were the people of honor and high rank. And there was Qārūn, Fir‘awn, and Hāmān, whose wealth is well-known, but the real people of lowliness and vileness.

As for the Nabataean woman, perhaps there is a Nabataean woman whom many from Quraysh would not dare to seek due to her wealth and high worldly status, while perhaps the daughter of a caliph perished in destitution, hardship, and loss.

Then his saying, “They are separated, but if a long time passes and she has children from him, they are not separated,” is the very essence of falsehood. There is either truth or falsehood, and there is no third possibility. If it is truth, then no one has the right to nullify the truth after its contract, and also not after that. And if it is falsehood, then falsehood must always be rejected, except if there is a text from the Qur’ān or Sunnah from the Messenger of Allah ﷺ, which must then not be transgressed. There is no basis in the Qur’ān, and also not in any authentic Sunnah in the saying of Mālik.

As for the statement of Abū Thawr and those who allow any Muslim to be the walī for a woman, they mention the texts about the Muslims being the awliyā’, “The believing men and believing women are awliyā’ of each other.” [9:71]

The meaning of walī does not apply here by necessity, there is no difference that there are many rulings in which the ‘aṣabah are the only awliyā’ that are ruled like with inheritance, qīṣāṣ and others. And the same is in this case, because of the saying of the Messenger of Allah ﷺ, “If they dispute, the ruler is the walī of the one who has no walī,” so this invalidates and prevents the walī of a woman from being every Muslim, and because considering the dispute of everyone that becomes Muslim is impossible. And exalted is He to order considering the impossible that is not possible. So it is established that he ﷺ only meant specific people who can dispute over marrying off a woman for which there is no right for other than them in that.

And his ﷺ saying, “The ruler is the walī of the one who has no guardian,” is a clear clarification of what we have said, because if he ﷺ had meant every Muslim, then his statement “of the one who has no walī” would be impossible and false, and far be it from him to say such. So it is established that they are the ‘aṣabah who exist for some women and do not exist for others.

And we know that it can be other than the ruler when the ruler is not found or cannot be reached because the one that is capable with either his correct knowledge about the matter or authority takes the place of the ruler in that issue. This applies for every single judgment, ḥadd and rights if he has knowledge about the entire issue. There is nothing that invalidates this. And if he has no knowledge, it is false as he follows about that which he has no knowledge of, Allah said, “And do not pursue that of which you have no knowledge.” [17:36]

As for the statement of Abū Sulaymān, he relied upon the established narration from the Messenger of Allah ﷺ, “A virgin must be asked permission by her father, and the previously married woman has more right to herself than her walī.”³⁷

And the saying of the Prophet ﷺ, “The previously married woman must not be married off until she is consulted, and the virgin must not be married off until her permission is sought, and her permission is her silence.”³⁸

This narration only emphasizes that the woman that is already married, after the walī denies, that she can ask another walī. And that she can utter her permission. And the narration does not indicate that this is not also the case for the virgin because of the general ḥadīth that if there is dispute then the sultan is the walī of who has no walī.

If there would be no other narration it would be just as Abū Sulaymān said. But his ﷺ saying, “Any woman who marries without the permission of her walī, her marriage is false,” is general for every woman, whether previously married or a virgin.

³⁷ Ṣaḥīḥ Muslim 1421, 67-68: Ṣaḥīḥ

³⁸ Sunan al-Tirmidhī 1107: Ṣaḥīḥ

And this saying clarifies that the meaning of the saying of the Prophet ﷺ, “And the previously married woman has more right to herself than her guardian,” is that his authority over her does not continue without her permission, and she does not marry except whom she wishes. And when she desires marriage, it is not permissible for her except with the permission of her walī. If he refuses, the ruler marries them in spite of the refusal of the obstinate walī.

And the narration does not indicate that all of this is not the case for the virgin as clarified.

As for those say that there is no meaning to the walī at all and that any woman can marry herself, is that they argue using the saying of Allah the Exalted, “Until she marries another husband.” [al-Baqarah: 230]

And His saying the Exalted, “When they have fulfilled their term, then there is no blame upon you for what they do with themselves.” [al-Baqarah: 234].

The answer: We have already said that His saying the Exalted, “And marry off the single ones among you.” [al-Nūr: 32] is a clarification that their marriage is not valid except with the permission of the walī. And also the narration of the Prophet ﷺ invalidating it without the walī.

They also argue with that that Umm Ḥabībah was married by al-Najāshī to the Messenger of Allah ﷺ.

This is not a ḥujjah for them, because Allah the Exalted says, “The Prophet is more worthy of the believers than themselves, and his wives are their mothers.” [al-Aḥzāb: 6]. This is then outside his ﷺ statement, “Any woman who marries without the permission of her walī, her marriage is false.”³⁹

And also his saying ﷺ is an addition to the original state, because the original state without any doubt, is that a woman can marry whomever she wishes without a walī. So the additional shar’ is that

³⁹ Musnad Aḥmad 24205, 40/243: Ṣaḥīḥ

which it is not permissible to abandon, because it is a revealed sharī‘ah from Allah the Exalted, just like the prayer after it did not exist, and zakāh after it did not exist, and in the same manner all rulings, without difference.

They also argue with a narration in which it is stated that ‘Umar ibn Abī Salamah married off Umm Salamah to the Prophet ﷺ⁴⁰.

This is weak because it has only come through the ṭarīq of ibn ‘Umar ibn Abī Salamah, and he is majhūl.

Then, even if it would be authentic, the ruling on it would be the same as the ruling on the ḥadīth of Umm Ḥabībah without difference, while ‘Umar ibn Abī Salamah was, at that time, a young boy who had not reached maturity, there is no disagreement about this among ahl al-‘ilm of narrations. So, it is false that the Messenger of Allah ﷺ would depend upon a contract from one whose contract is invalid and false.

And what is sufficient for all of this is what Anas ibn Mālīk narrated, “When the verse regarding Zaynab bint Jaḥsh was revealed: ‘So when Zayd had finished with her [divorce], We married her to you’ [al-Aḥzāb: 37], he said: ‘She used to boast over the other wives of the Prophet ﷺ, saying: ‘Your families married you off, but Allah, the Mighty and Majestic, married me from above seven heavens.’”⁴¹

So this is an authentic narration, it establishes that all of his wives ﷺ were married to him by their awliyā’, except for Zaynab for indeed Allāh married her to him ﷺ.

And with this, the meaning of the statement of Umm Ḥabībah is established that al-Najāshī married her, is only with the meaning that he undertook her affair and what she needed, and the contract took place (permission given by her walī) in his presence, only with that meaning. At that time, the people closest to her were ‘Uthmān ibn ‘Affān ibn Abī al-‘Āṣ ibn Umayyah, and ‘Amr and Khālīd, the sons of Sa’d ibn al-‘Āṣ ibn Umayyah. Then could al-Najāshī marry her off with

⁴⁰ Musnad Aḥmad 26529, 44/150: Ḍa‘īf

⁴¹ Ṣaḥīḥ al-Bukhārī 4720: Ṣaḥīḥ

their false meaning off taking care of the marriage contract by giving permission while these were present, pleased, happy, and certainly granting permission for that without any doubt?

And how when we just mentioned that if this would not be the case it would still not indicate what they claim.

As for the narration in which he ﷺ married off a woman in exchange for teaching her a sūrah from the Qur'ān⁴², in which there was no mention made of her walī in the narration.

And also every ḥadīth they mention, such as the narration of the marriage of Maymūnah, Mother of the Believers, she appointed al-'Abbās to marry her to the Prophet ﷺ⁴³.

And the marriage of Abū Ṭalḥah to Umm upon Islām alone, Anas ibn Mālīk married her to him while he was a small boy, under ten years of age⁴⁴.

All of this is abrogated by him ﷺ nullifying marriage without a walī.

And all the other aḥādīth in which it is mentioned that women were married off without their permission, and he ﷺ annulled their marriages and gave them the choice to approve it if they wished, then all of these are narrations that are not authentic: either they are mursāl or they are from the narration of 'Alī ibn Ghurāb, who is weak. So the correctness of our saying is evident. And with Allah, the Most High, is success.

Our statement: that it is not permissible for a more distant walī to marry off a woman while a closer walī is present, then all people meet in a father after a father back to Ādam without doubt. If it would be permissible for the more distant to marry her off while the closer is present, it would be permissible for anyone on the face of the earth to marry her off, because he then without doubt meets her through some of her forefathers. If they set a specific limit to this, they are obliged to

⁴² Ṣaḥīḥ al-Bukhārī 5029: Ṣaḥīḥ

⁴³ Al-Mujtaba 3273: Ṣaḥīḥ

⁴⁴ Al-Sunan al-Kubra 5374, 5/179

bring decisive evidence for it and there is no way for that. So it is established with certainty that there is no right for the more distant one instead of the closer one. Then if the closer does not exist, it passes to the one above him by one father, and so on forever, as long as she has a known ‘aṣib walī, just as in inheritance (‘aṣabah), there is no difference.

As for when the walī is absent, one must wait for him. If they say: “That causes harm to her,” we say: necessity does not permit the private parts. The Mālikīs agree with us that if the absent husband has wealth from which the woman can be supported, she is not divorced from him, even if his absence harms her due to lack of intimacy and loss of many of her affairs. And the Ḥanafīs agree with us that even if he has no wealth, she is not divorced from him, while and is no harm greater than lack of financial support.

Then, we ask them: What is the limit of absence in which they wait for the walī, and the absence in which they do not wait for him? And absence can be a second. They will only fall into falsehood and a saying whose reasoning is unintelligible. And by Allah, the Most High, we are aided.

As for when there is certainty that the ruler or those appointed by him cannot be reached, then the one closest to this description as clarified before can marry her off. Because the Prophet ﷺ made the ruler responsible for marrying her off. And with judgments, ḥudūd and rights, if there is no ruler or those appointed then the one who is capable must carry it out and he is in that the ruler.

Issue: Marrying Off a Girl Without Her Approval

It is allowed for the walī to marry off the girl without her consent. Except when she reaches puberty, then whether she is a virgin or not except she must not be married off except with her approval.

The decisive evidence is the texts previously mentioned in which the Prophet ﷺ obliged the approval of a woman in general.

As for the girl that is not an adult specifically:

If it is said, “Why do you not invalidate marriage with a girl that has not reached puberty in general because marriage is a contract and has obligations, and anyone that has not reached puberty is not addressed with any ruling as the Prophet ﷺ, ‘The pen is raised from three... And the child till he reaches puberty.’⁴⁵ And ‘Ā’isha might not have reached puberty.”

The answer: A girl menstruating at that age has one hundredth of one percent chance, such extreme rare cases are not considered at all, they are mere assumptions, not certainty. So it is established that she had not reached puberty when she was married off to the Prophet ﷺ when she was six years old⁴⁶, whoever claims otherwise has spoken without certainty. And as this is the case, the only matter that is made an exception is the permissibility of the marriage contract with a girl that has not reached puberty from the general ruling that no one is obliged anything before puberty.

If it is said, “Why do you not say that such a marriage was before the ruling was revealed that children are not obliged anything?”

The answer: There were rulings in which Allāh differentiated between the non-mature and the mature at Makkah such as his saying, “And do not approach the orphan’s property except in a way that is best he reaches maturity.” [al-An‘ām; 152]

There is no doubt that the differentiation in rulings being obligatory on the adult and it not being obligatory on the non-adults is something established early Islām, claiming a delay in this is conjecture.

If it is said, “The rulings of marriage back then in early Islām were not complete.”

⁴⁵ Sunan Abī Dāwud 4403: Ṣaḥīḥ

⁴⁶ Ṣaḥīḥ al-Bukhārī 3896: Ṣaḥīḥ

The answer: This is mere tumult, the marriage of the Prophet ﷺ with ‘Ā’isha is the ruling of the situation she was in.

And if it is said, “A woman is not able to give permission except when she is mature and sane.”

The answer: Many women do not become bālighah except after age nineteen and she is then mature and sane without difference and able to give permission, and likewise many years before that as well. But as it is established that a girl at very young age is not able to, such a girl is made an exception, permitting marrying her without her approval as we have mentioned.

If it is said, “This marriage of ‘Ā’isha with the Prophet ﷺ was before the order of seeking the permission of the girl was revealed.”

The answer: There is not in any authentic text about this marriage that her permission was not sought, what is not mentioned is not a negation, so this is a claim that is not permissible. There is only that it is not possible to ask a girl of that age her permission, so that establishes that this is a specific situation in which it is permissible to marry off a girl that is not an adult without her approval.

If it is said, “Why do you specify adulthood/puberty as the limit by which it comes prohibited to marry her off except with her consent?”

We say: There is no limit to the actions of the Prophet ﷺ, while it is established that it is allowed to marry her off without her permission and prohibited after she reaches puberty. So there must be a limit and there is nothing that is possible to be that limit except puberty (bulūgh).

And it is not allowed to say, “A girl that is not an adult can be married off but she must still must consent even if she is very young but if she is not able to then only when she is able to give consent,” this is because a six year old can never do this and extremely rare cases are not considered, they are mere assumptions.

As for it being invalid for anyone other than her father to marry her off, Allāh said, “And every soul earns not [blame] except against itself.” [al-An‘ām: 164]

So it is not allowed for anything to exit this generality except what texts have come with and that is the father.

As for the narration, “A virgin must be asked permission by her father, and the previously married woman has more right to herself than her walī.”⁴⁷

And the saying of the Prophet ﷺ, “The previously married woman must not be married off until she is consulted, and the virgin must not be married off until her permission is sought, and her permission is her silence.”⁴⁸

This narration does not indicate any difference between the permission of a virgin and the previously married women, both must give permission, and both require the permission of the walī because of the authentic narration obliging the permission of the walī in general. This narration does not negate the obligation of his permission. And also not the narration, “A virgin must be asked permission by her father, and the previously married woman has more right to herself than her walī.”⁴⁹

There is only in it emphasizing that the woman that is already married, after the walī denies, that she can ask another walī. And that she can utter her permission. And the narration does not indicate that this is not also the case for the virgin because of the general ḥadīth that if there is dispute then the sultan is the walī of who has no walī, while she must remain silent when giving consent.

And how when narrations have come with what we have said, Jābir narrated, “A man married off his daughter while she was a virgin, without her consent. She came to the Prophet ﷺ, and he separated them.”⁵⁰

Mu‘āwiyah ibn Ṣālīḥ al-Ash‘arī is a thiqah and he is not the Andalusī Ḥaḍramī, who is weak, and is from an earlier time.

⁴⁷ Ṣaḥīḥ Muslim 1421, 67-68: Ṣaḥīḥ

⁴⁸ Sunan al-Tirmidhī 1107: Ṣaḥīḥ

⁴⁹ Ṣaḥīḥ Muslim 1421, 67-68: Ṣaḥīḥ

⁵⁰ Al-Sunan al-Kubra 5363, 5/575: Ṣaḥīḥ

And the ḥadīth of Khansā' bint Khidhām when she was married off by her father when she did not want it, then the Prophet ﷺ invalidated the marriage⁵¹.

Some people claimed, “The Prophet ﷺ married off his daughters without seeking their permission.”

The answer: This is not known in any of the narrations at all, it is a false claim. The reports stating that he ﷺ used to consult them.

Issue: A Father Marrying Off His Young Son

It is not permissible for the father, and also not for anyone else, to marry off a young boy until he reaches puberty. If it is done, it is invalid forever. Some people allowed it, and they have nothing in their hands except qiyās to the issue of a young girl. And Allāh said, “And no soul earns against itself.” [al-An‘ām: 164] This prevents the permissibility of anyone making a contract on behalf of anyone else, except where there is a text from the Qur‘ān or the Sunnah making it an exception. And there is no text, and no Sunnah, permitting a father to marry off his young son.

Issue: If a Virgin Woman Accepts Islam But Her Father is a Kāfir, Or He is Insane

If a virgin woman accepts Islam and her father does not, or he is insane, she is considered in the same ruling as one who has no father and another walī or a ruler and those appointed if she does not have a walī or the one close to that description, Because Allah ﷻ has severed wilāyah between the Kuffār and the Muslims. Allah ﷻ said, “O you

⁵¹ Ṣaḥīḥ al-Bukhārī 5138, 5139: Ṣaḥīḥ

who have believed, do not take as allies a people with whom Allah is angry.” [al-Mumtaḥanah: 13]

And He said, “The believing men and believing women are allies of one another” [al-Tawbah: 71].

And it is authentically narrated about the insane person that the Messenger of Allah ﷺ said: “The pen has been lifted from three... The insane until he regains sanity,” as mentioned before.

So it is established that such a person is not addressed with the obligation of seeking her permission and also not saying the words of inkāḥ. Allah ﷻ has only addressed the people of intellect (ulūl-albāb) in these matters. So she may marry whomever she wishes with the permission of another walī from among her guardians or the ruler.

And if the father accepts Islam but she does not, then if he accepts Islam (after her), or she accepts Islam, or he regains sanity, she returns to the ruling of having a father, because he then enters into the order of marrying her off with her permission.

Issue: Permission of a Waṣī in Marriage

A Waṣī, who is the person appointed to take care of and manage the affairs of someone who is legally incapacitated (ḥajr) has no authority whatsoever in marrying off, not a man and also not a woman, whether they are young or adult. We have clarified that only the walī can marry off. And in Kitāb al-Ḥajr we have clarified legal incapacitation (ḥajr) does not apply for the sane and mature at all, only for the insane and non-mature.

If someone attempts to use as evidence the narration from the grandfather of ‘Abd al-Raḥmān ibn Abī Labībah, that the Messenger of Allah ﷺ said, “Whoever prevents an orphan under his care from marrying and he fornicates, then the sin is upon both of them.”

The answer: This is mursal and there is no ḥujjah in a mursal narration. And Yaḥyā ibn ‘Abd al-Raḥmān ibn Abī Labībah is weak, and also, there is no mention of waṣī in it, it is possible for it to be the

leader of a tribe preventing an orphan from his clan from marrying unjustly.

Issue: A Bequest to Marry Off One's Daughter After Death

Whoever bequeaths that, after his death, his virgin daughter mature or a child must be married off, then this is an invalid bequest that it is not permissible to execute.

The decisive evidence of this: If she is not mature, then she becomes with the death of her father an orphan, and the text has come stating that the orphan girl must not be married off until she is asked for her permission. As for the adult woman, her father has no right to marry her off during his lifetime without her permission, then how after his death?

And it has been narrated from the Messenger of Allah ﷺ, "When one of you dies, his deeds are cut off except from three," and this is not among those three.

Issue: Marrying Off a Woman is Not Valid Except by Using the Words 'Nikāḥ,' 'Zawāj,' 'Tamlik,' or 'Imkān'

The walī uses these words, and it is not valid with the wording of 'gift' (hibah), or other wordings as we have mentioned, and also not with the wording in a non-Arabic language used to express those words, except for the one who speaks that language and is proficient in it.

The decisive evidence for this:

As for the word 'nikāḥ,' Allah said, "Then marry (fankihū) those women who please you." [al-Nisā': 3]

And His saying ﷺ, “And marry off (wankiḥū) the singles among you, and the righteous among your male slaves and female slaves.” [al-Nūr: 32]

As for the words ‘zawāj,’ Allah said, “Then when Zayd had no longer any need for her, We married (zawwajnākahā) her to you.” [al-Aḥzāb: 37]

As for the word ‘imkān,’ Sahl ibn Sa’d al-Sā’idī narrated, “A woman offered herself to the Prophet ﷺ... The Messenger of Allah ﷺ said to him: ‘I have married her to you with what you have of the Qur’ān.’”⁵²

As for the word ‘tamlīk,’ Sahl ibn Sa’d al-Sā’idī narrated that the Prophet ﷺ said to the man: “I have given her to you in ownership (mallaktukahā) with what you have of the Qur’ān.”⁵³

If it is said, “But Sufyān ibn ‘Uyaynah narrated this ḥadīth from Abū Ḥāzim from Sahl, and in it he said: ‘I have married her to you (ankaḥtukahā).’”⁵⁴ And it was also narrated by Zā’idah⁵⁵, Ḥammād ibn Zayd, and ‘Abd al-‘Azīz ibn Muḥammad al-Darāwardī, all from Abū Ḥāzim from Sahl, and they said in it: ‘I have wed her to you (zawwajtukahā) so teach her from the Qur’ān.’ And it is one incident, one man, and one woman?”

We say: Yes, all of that is authentic. And we have narrated from Anas ibn Mālīk about the Prophet ﷺ, “When he spoke a statement, he would repeat it three times until it was understood from him.”⁵⁶

So it is established they are all words that he ﷺ said, teaching us with what wording a marriage contract is concluded with. And all praise is due to Allah, Lord of the Worlds.

Abū Ḥanīfah and Mālīk said, “Marriage is concluded with the wording of ‘hibah’ (gift).”

⁵² Ṣaḥīḥ al-Bukhārī 5121: Ṣaḥīḥ

⁵³ Ṣaḥīḥ al-Bukhārī 5087: Ṣaḥīḥ

⁵⁴ Ṣaḥīḥ Muslim 1425, 77: Ṣaḥīḥ

⁵⁵ Ṣaḥīḥ al-Bukhārī 5029: Ṣaḥīḥ

⁵⁶ Ṣaḥīḥ al-Bukhārī 94

This is extremely grave, because Allah says, “And a believing woman if she offers herself as a gift to the Prophet, and if the Prophet wishes to marry her, exclusively for you, not for the believers” [al-Aḥzāb: 50].

So it is established that marriage with the wording of ‘hibah’ is invalid for anyone other than the Prophet ﷺ. And among the astonishing things is that they took the case of the woman who offers herself in marriage, though Allah, the Exalted, said it is specifically for His Messenger ﷺ and not for the believers, then they make it general for others besides him. Then they took what the Messenger of Allah ﷺ judged in permitting marriage with a mahr of an iron ring, or with teaching something from the Qur’ān, and then they make that specific to him. And we ask Allah for well-being.

Issue: Two Witnesses Are Not Obligatory for the Nikāḥ

The decisive evidence for this is that there is nothing authentic that obliges this for the validity of any nikāḥ.

As for the Ḥadīth in which it is attributed to the Prophet ﷺ that he required two witnesses for the validity of the nikāḥ, they are all weak:

As for the ṭarīq from ‘Ā’isha from the Prophet ﷺ⁵⁷.

This is weak because Abū Yūsuf Muḥammad ibn Aḥmad ibn al-Ḥajjāj al-Raqqī and Ishāq ibn Aḥmad ibn Ishāq al-Raqqī are majhūl

And there is another ṭarīq from ‘Ā’isha from the Prophet ﷺ⁵⁸.

This is weak because ‘Īsa ibn Abī Ḥarb, Ghulayb ibn Sa‘īd, ‘Abdullah ibn Abd al-Ṣamad ibn al-Muhtadī are majhūl.

And another ṭarīq from ‘Ā’isha from the Prophet ﷺ⁵⁹.

⁵⁷ Al-Sunan al-Kubrā 13717, 7/202: Ḍa‘īf

⁵⁸ ‘Ilal al-Dāraquṭnī 15/15-16: Ḍa‘īf

⁵⁹ Ṣaḥīḥ ibn Hibbān 1364, 2/299: Ḍa‘īf

This is weak because ‘Umar ibn Muḥammad al-Hamdānī and Sa‘īd ibn Yahyā ibn Sa‘īd are majhūl.

And there is another ṭarīq from ‘Ā’isha⁶⁰.

This is weak because Abū al-Khaṣīb is majhūl.

And as for the narration from ibn ‘Abbās from the Prophet ﷺ⁶¹.

This is weak because of the weakness of ‘Adī ibn Faḍl, and ‘Alī ibn Aḥmad al-Haytham al-Bazzāz is not a thiqaḥ and Muḥammad ibn Ja‘far al-Maṭīrī and ‘Īsa ibn Abī Ḥarb are majhūl.

And from other ṭuruq from ‘Imrān ibn al-Ḥuṣayn from the Prophet ﷺ⁶².

This is weak because of the weakness of ‘Abdullah ibn Muḥriz.

And from other ṭuruq, it has come from al-Ḥasan from the Prophet ﷺ⁶³.

This is weak because it is mursal.

The only authentic narration in this chapter is what is attributed to the Prophet ﷺ, “The immoral women are those who marry themselves off without evidence (bayyinah).”⁶⁴

And this does not indicate two witnesses being a condition for the validity of nikāḥ, two witnesses are only an evidence (bayyinah) among the evidences (bayyināt) and not every bayyinah are two witnesses, so we find that bayyinah can occur on the walī as through the walī it becomes clear (yatabayyana) that it is a nikāḥ. And other authentic texts have made the walī a condition so it is established that the walī is the bayyinah and nothing authentic has come about the witnesses so that is not the bayyinah, and whoever claims otherwise has spoken about that which he has no knowledge off.

⁶⁰ Sunan al-Dāraquṭnī 3529, 4/321: Ḍa‘īf

⁶¹ Sunan al-Dāraquṭnī 3521, 4/315: Ḍa‘īf

⁶² Al-Mu‘jam al-Kabīr 299: Ḍa‘īf

⁶³ Al-Muwatta’ of ibn Wahb 238, 1/38: Ḍa‘īf

⁶⁴ Sunan al-Tirmidhī 1103: Ṣaḥīḥ

Issue: The Description of a Nikāḥ Contract

So based on what preceded if the man and woman consent to marry by her accepting his marriage requests and the walī also approves, then if the walī utters the words of nikāḥ the marriage contract establishes, whether they are in the same physical place or not. And the clarification for all of this has preceded, and by Allāh is success.

Issue: Announcing the Marriage, Secret Marriage and Amusement

There is nothing that obliges announcement of the nikāḥ and also not making it public and the only obligation is the walimah as clarified before. And amusement is allowed and not obligatory.

And some said, “If the two witnesses are kept secret, then it is a secret marriage, and it is false.”

We say: We have clarified that witnesses are not obligatory. And there has never come an established prohibition on secret marriage. And also, it is not a secret (sirr) if three people know about it: the man getting married, the walī and the woman getting married.

The shā‘ir (poet), Qays ibn al-Ḥaddādiyah al-Khuzā‘ī said, “Behold, every secret (sirr) that passes two becomes known (shā‘ī).”⁶⁵

And the shā‘ir ‘Umar bin Abī Rabī‘ah said, “A secret is what only two keep between themselves... and every secret other than two is spread (muntashir).”⁶⁶

And as for the narration attributed to the Prophet ﷺ, “Make the marriage public/announce it and silence the khuṭbah.”⁶⁷

⁶⁵ Al-Aghānī 14/140

⁶⁶ Dīwān ‘Umar ibn Abī Rabī‘ah pg. 167

⁶⁷ Al-Gharā‘ib al-Multaqaṭah 81, 1/305-306: Ḍa‘īf

This is weak as Umm ‘Alqamah is weak and Hārūn al-Dimashqī is majhūl.

And through another ṭarīq it is attributed to the Prophet ﷺ, “Announce the marriage.”⁶⁸

This is weak as ‘Abdullah ibn al-Aswad is majhūl.

And another ṭarīq⁶⁹ with the same.

This is weak because of the weakness of Khālīd ibn Ilyās.

And through another ṭarīq from the Prophet ﷺ, “Announce this marriage and hold it in the mosques, and strike over it with the duffs.”⁷⁰

This is weak because of the weakness of ‘Īsa ibn Maymūn al-Anṣārī.

As for what is narrated by Muḥammad ibn Ḥāṭib al-Jumaḥī, “The Prophet ﷺ said: ‘The separation between what is permissible and what is prohibited is the duff and the sound in marriage.’”⁷¹

This is weak because Muḥammad ibn Ḥāṭib al-Jumaḥī is not a companion, he has no Ṣuḥbah and even if it would be authentic its wordings do not necessitate what is intended from it and also does not indicate an obligation.

As for what Abū Ḥasan narrated, “The Prophet ﷺ used to dislike a secret marriage until a duff was struck and it was said: ‘We have come to you, we have come to you, so greet us and we will greet you.’”⁷²

This is weak because of the weakness of Ḥusayn ibn ‘Abdullah ibn Ḍumayrah and Ismā‘īl ibn Abī Uways.

As for what ‘Abd Allāh ibn ‘Umayr (‘Umayrah) narrated, “My wife, the daughter of Abū Lahab, told me: ‘The Messenger of Allah ﷺ

⁶⁸ Musnad Aḥmad 16130, 26/35: Ḍa‘īf

⁶⁹ Sunan ibn Mājah 1895: Ḍa‘īf

⁷⁰ Sunan al-Tirmidhī 1089: Ḍa‘īf

⁷¹ Musnad Aḥmad 15452, 24/190: Ḍa‘īf

⁷² Musnad Aḥmad 16712, 27/267: Ḍa‘īf

entered upon us when I had married the daughter of Abū Lahab, and he said: ‘Is there any entertainment?’”⁷³

This is weak because Ma‘bad ibn Qays and ‘Abdullah ibn ‘Umayr are majhūl. And even if it would be authentic its wordings do not necessitate an obligation.

And as for what Ibn ‘Abbās narrated, “‘Ā’ishah arranged the marriage of a female relative of hers from the Anṣār. The Messenger of Allah ﷺ came and said: ‘Have you brought the girl (to her husband’s house)?’ They said: ‘Yes.’ He said: ‘Have you sent someone with her to sing?’ She said: ‘No.’ The Messenger of Allah ﷺ said: ‘The Anṣār are a people who have romantic feelings. Why do you not send someone with her to say: ‘We have come to you, we have come to you, so greet us and we will greet you.’”⁷⁴

This is weak because of the weakness of al-Ajlaḥ ibn ‘Abdullah al-Kindī.

And it is narrated by ‘Ā’ishah that she arranged the marriage of a woman to a man from the Anṣār, and the Prophet ﷺ said, “O ‘Ā’ishah, did you not have any amusement during the ceremony? Indeed, the Anṣār like amusement.”⁷⁵

This is weak because Muḥammad ibn Sābiq is weak, and also even if it would be authentic its wordings do not necessitate an obligation.

Issue: Marriage Without Mentioning the Mahr

It is permissible to marry without mentioning the mahr by being silent about it, but if a condition is stipulated that there will be no mahr, then the marriage is invalid and false.

⁷³ Musnad Aḥmad 16626: Ḍa‘īf

⁷⁴ Sunan ibn Mājah 1900: Ḍa‘īf

⁷⁵ Ṣaḥīḥ al-Bukhārī 5162: Ḍa‘īf

The decisive evidence for this is the statement of Allah, the Exalted, “There is no blame upon you if you divorce women you have not touched nor specified for them an obligation (farīdah).” [al-Baqarah: 236]

The farīdah mentioned is the mahr, there is no difference about it meaning mahr in the language as it means allotting a share (of property) to someone. And even if that would not be the case then it is a mujmal that is clarified, not a mujmal that is not clarified so it is not left upon its generality. Allah said, “Give them their payment as an obligation (farīdah).” [4:24]

So Allah validated the marriage in which nothing is specified as mahr for the woman, because it validates divorce in such a marriage, and divorce is only valid after a valid marriage.

As for stipulating in a marriage that there is no mahr, then this is invalid, and it also invalidates the marriage, the Messenger of Allah ﷺ said, “Every condition that is not in the Book of Allah is false.”⁷⁶

And this is a condition not found in the Book of Allah, so it is false.

Instead, there is in the book of Allah the invalidation of that, “And give the women their dowries as a free gift” [an-Nisā’: 4].

As for it invalidating the marriage, then that is because it is false condition and such a nikāḥ with a false condition, its validity does not depend when it is concluded except on what is false, so it is a nikāḥ for which is no validity for, so it is false and invalid. And Allah, the Exalted, grants success.

⁷⁶ Ṣaḥīḥ al-Bukhārī 2155: Ṣaḥīḥ

Issue: Deciding the Mahr and Demanding it

If the woman who was married without a specified mahr demands it, it must be given to her. If she and her husband agree on something that is allowed to own then that is her mahr and she has no other. If there is a disagreement, then her mahr is that of women equal to her whether she or he likes it or dislikes it.

The decisive evidence for this is that there is no disagreement on the validity of what both of them are pleased with from what is allowed to own.

Some people only differ on certain amounts, which we will clarify later, by the will of Allah, and their saying is false as we will clarify that later, by Allah's help and strength.

As for demanding him to pay it and that she must have that which women have equal to her, then Allah has obliged the mahr for her, and it must be given to her if she demands it.

And it is not permissible to compel the husband to give what she demands if it is beyond his ability, what he is not at that moment able to give while still having enough left over to live on. Whether he later appears able to give it or not, because that does not exist yet while the obligation of the mahr is before that.

And she cannot be compelled to accept what he gives her, as he may give her only a small amount, and there is no text compelling her to accept it or compelling him to give what she demands.

Since these two are invalidated then, only a mahr of women like her (in religion), which must be granted to her. And Allah, the Exalted, grants success, or till both of them agree on a valid amount.

Issue: The Father Marrying the Child Off With Less Than the Usual Mahr

It is not permissible for a father to marry off his daughter who is a child for less than the usual mahr, and the father's decision does not oblige her anything, she must get the usual mahr.

The decisive evidence is that it is her right As Allah said, "And give the women their dowries as a free gift." [al-Nisā': 4]

As it is her right and part of her wealth, her father has no authority over her wealth as Allah said, "And every soul does not earn except against itself." [al-An'ām: 164]

And it is not permissible to demand the full mahr upon the father except if he voluntarily includes it in his property, because Allah says, "And do not consume one another's wealth unjustly except [in lawful] business by mutual consent among you." [al-Nisā': 29]

And the mahr, by the text of the Qur'ān, is upon the husband, not the father, so compelling the father to pay it from his property is injustice and prohibited consumption of property.

Issue: A Woman Cannot Be a Walī

A woman cannot be a guardian (walī) in marriage, it is invalid and false. If she wants to marry off her slave girl or her slave, she must order the closest male relative to her from her 'aṣabah as mentioned before to give her permission for the marriage. If she has no 'aṣīb, then the ruler gives her permission for the marriage.

The decisive evidence for this is the saying of Allah ﷻ, "And marry off the single ones among you and the righteous among your male slaves and your female slaves." [al-Nūr: 32]

So it is established that those who are ordered to marry off the slaves, males and females are the same ones ordered to marry off the single ones that are not slaves, because the address is one, and the

wording of the verse necessitates that those ordered to do that are the men, both in marrying off the single ones and in marrying off the slaves, male and female.

So from this it is established that a woman cannot be a walī in marrying off anyone at all. But, her permission is still obligatory for it to be valid, otherwise, it is not permissible, because of the saying of Allah ﷻ, “And whoever among you cannot afford to marry free, believing women, then [let him marry] from what your right hands possess of believing slave girls. And Allah is most knowing about your faith. You are of one another. So marry them with the permission of their people.” [al-Nisā’: 25]

Issue: A Muslim Being the Walī of a Kāfirah Woman, and a Kāfir Being the Walī of a Muslim Woman

A kāfir cannot be the walī of a Muslim woman, and a Muslim cannot be the walī of a kāfirah woman, whether he is the father or anyone else, they are the same in this. And a kāfir is the walī of kāfirah woman who is under his waliyyah, and he can marry her to a Muslim or to a kāfir.

The decisive evidence for this is the saying of Allah ﷻ, “And the believing men and believing women are awliyā’ of one another.” [Al-Tawbah: 71]

And His saying ﷻ, “And those who disbelieve are awliyā’ of one another.” [Al-Anfāl: 73]

And we clarified this before.

Ibn Wahb, the companion of Mālik, said: “A Muslim can be the walī of his kāfirah daughter in marrying her to a Muslim or to a kāfir.”⁷⁷

This is false because of what we have mentioned. And by Allah ﷻ is all success.

⁷⁷ Nawādir al-Fuqahā’ pg. 86 | Al-Iqnā’ fī Masā’il al-Ijmā’ 2/9

Issue: The Walī of a Woman Can Marry Her to Himself

It is permissible for the walī of a woman, if he is not among those prohibited to her, to marry her to himself if she is pleased with him as a husband and there is no one closer to her than him, otherwise, it is not permissible.

Al-Shāfi‘ī and Abū Sulaymān said, “He cannot marry her to himself.”

They argued, “A nikāḥ requires a groom (nākiḥ) and a person marrying off (the munkiḥ) so it is not permissible for the groom to be the one marrying off.”

So it remains upon us to decisive evidence for the correctness of our saying. So we find what Anas ibn Mālīk narrated, “The Messenger of Allah ﷺ freed Ṣafīyyah and married her, and made her emancipation her mahr, and he held a walīmah for her with ḥays (a mixture of ghee, dates and curd).”⁷⁸

This is the Messenger of Allah ﷺ marrying his mawlāh to himself and he is the ḥujjah against other than him.

And the Messenger of Allah ﷺ said, “Any woman who marries without the permission of her walī, her marriage is false.”⁷⁹

So whoever marries his walīyyah (the woman he is a walī of) to himself with her consent, she has married with the permission of her walī, and this is a valid marriage. The Prophet ﷺ did not make it a condition that the walī must be other than the groom (nākiḥ). And as he did not prohibit it, it is permissible.

Allah ﷻ says, “And He has clarified you what He has prohibited you.” [Al-An‘ām: 119]

This is among what He has not prohibited.

⁷⁸ Ṣaḥīḥ al-Bukhārī 5169: Ṣaḥīḥ

⁷⁹ Musnad Aḥmad 24205, 40/243: Ṣaḥīḥ

And Allah ﷻ says, “And marry off the unmarried among you and the righteous among your male slaves and female slaves.” [Al-Nūr: 32]

So whoever marries an unmarried woman to himself with her consent has done what Allah ﷻ ordered, and Allah ﷻ did not prevent that the one marrying off the woman can be the same as the one marrying her. So, it is established that this is permissible and by Allah ﷻ is all success.

Issue: Marriage with a Fornicatress

It is not permissible for a fornicatress to marry anyone, whether a fornicator or a chaste man until she repents. Once she repents, marriage to a chaste man then becomes permissible for her. And it is not permissible for a Muslim fornicator to marry a Muslim woman, whether she is a fornicatress or chaste, until he repents. Once he repents, marriage to a chaste Muslim woman then becomes permissible for him. But a Muslim fornicator can marry a chaste woman from the People of the Book even if he has not repented. If any of what we have mentioned before, occur, the marriage is annulled forever. But if a chaste man marries a chaste woman, and then one or both of them commit zinā after that, the marriage is not annulled because of that.

The decisive evidence for our saying is the saying of Allah, the Mighty and Majestic, “The fornicator does not marry (yankiḥu) except a fornicatress or an idolatress, and the fornicatress, none marries her except a fornicator or an idolater, and this has been forbidden to the believers” [al-Nūr: 3].

Some people said, “It was narrated from Sa‘īd ibn al-Musayyib that he said, “They claim that this was abrogated by the following verse: ‘And marry off the single ones among you, and the righteous among your male and female slaves.’ [al-Nūr: 32]”⁸⁰

⁸⁰ Tafsīr ibn Abī Ḥātim 14134, 8/2524

This is a claim without any decisive evidence. It is not permissible to say regarding the Qur'ān or the Sunnah that something is abrogated except with decisive evidence, not by an assumption. The obligation is only to use all texts.

So the meaning of His saying, the Exalted, “And marry off the single ones among you.” [al-Nūr: 32] And His saying, “And marry women of your choice.” [al-Nisā': 3], Is except those prohibited to you, from the close relatives and other than them, there is no doubt in this. And marriage to a fornicatress, and marriage of a fornicator to a believing woman, are among what has been prohibited to us. So it is an exception from that generality ('umūm), like exception of the other things that are prohibited from women.

Others said, “The meaning of yankiḥu (marry) in: ‘The fornicator does not marry (yankiḥu) except a fornicatress or an idolatress...’ [al-Nūr: 3] here is to have intercourse, not marriage.”

This is another claim without any decisive evidence, and a takhṣīṣ (specification) of the general verse by false conjecture. If the matter would be as they say, then it would be prohibited for a husband to have intercourse with his wife if she committed zinā and they do not say this.

If they say, “It is only intercourse through fornication that is prohibited?”

We say: This is an additional takhṣīṣ without decisive evidence, and a claim that is false with certainty as there is no evidence for it. This is not allowed in the religion of Allah, the Mighty and Majestic. Because if the verse would be a khabar, we find that if a fornicator forces himself upon a chaste Muslim woman, then he is a fornicator with a non-fornicatress. Far be it from Allah that we say something what is plainly seen with one's own eyes.

Abū Hurayrah narrated that the Messenger of Allah ﷺ said, “The fornicator who has been flogged must not marry except someone like him.”⁸¹

As for the case where a chaste man marries a chaste woman, and then one or both of them commit fornication afterwards, we say that their marriage is not annulled by faskh because of what Ibn ‘Abbās narrated, “A man said: ‘O Messenger of Allah, I have a wife who is beautiful and does not repel the hand of one who touches her.’ He said: ‘Divorce her.’ The man said: ‘I cannot be patient without her.’ He said: ‘Then keep her.’”⁸²

And when Mā‘iz confessed that he committed zinā while he was muḥṣan (married) the Prophet ﷺ did not annul (faskh) his marriage⁸³

As for what Baṣrah ibn Aktham narrated, “A woman committed fornication, so the Messenger of Allah ﷺ made her child a slave to her husband.”⁸⁴

This is weak because ibn Jurayj did not hear this narration from Ṣafwān ibn Sulaym but from Ibrāhīm ibn Yaḥyā⁸⁵ and he is weak. And no hearing of Sa‘īd from Baṣrah is established and some have said: Naḍrah.

⁸¹ Sunan Abī Dāwud 2052: Ṣaḥīḥ

⁸² Al-Mujtaba 3465: Ṣaḥīḥ

⁸³ Ṣaḥīḥ Muslim 1695, 22: Ṣaḥīḥ

⁸⁴ Sunan Abī Dāwud 2131: Ḍa‘īf

⁸⁵ Al-Muṣannaf of ‘Abd al-Razzāq 10705

Issue: Equality in Marriage, Marrying the Grave Sinner

A marriage between sinners is permissible, even if they are from the worst of sinners, and it is not a condition of a valid marriage for it to be between a man and woman that are equal, whether in religion, or lineage. None of this is a condition for the validity of a marriage. And no one is allowed to prevent a marriage based on any of these. Except that it is allowed for a more upright person to ask the woman for marriage if they are not married yet as will be clarified in the issues about khitbah.

As for the marriage of a woman to a sinning man or if both of them are sinners, there is nothing in the Qurʾān and authentic Sunnah that invalidates the marriage whoever prevents it, his objection is not considered.

As for making equality a condition for the validity of a marriage between a man and woman, whether in lineage or equality in religion. Those who oblige this equality mention weak narrations.

Buraydah narrated, “A young woman came to the Prophet ﷺ and said: ‘My father married me to his brother’s son in order to raise his own standing through me.’ The Prophet ﷺ left the matter to her. She said: ‘I have approved of what my father has done, but I wanted the women to know that the fathers have no authority in this matter.’”⁸⁶

There is no naṣṣ or dalīl in this whatsoever for the condition of equality between lineage.

Abū Ḥātim al-Muzanī narrated that the Messenger of Allah ﷺ said, “When there comes to you one whose religion and character you are pleased with, then marry him. If you do not do that, there will be tribulation (fitnah) in the land and widespread corruption (fasād).” They said: “O Messenger of Allah! What if there is something about

⁸⁶ Sunan ibn Mājah 1874

him?” He replied: “When there comes to you one whose religion and character you are pleased with, then marry him (thrice).”⁸⁷

This is weak as Muḥammad and Sa‘īd ibn ‘Ubayd are majhūl and ‘Abdullah ibn Hurmuz is weak.

‘Alī ibn Abī Ṭālib narrated that the Prophet ﷺ said to him, “‘Alī! Three matters must not be delayed: the ṣalāh when its time has come, a funeral when it is present, and the marriage of a single woman when there is an equal for her.”⁸⁸

This is weak as Sa‘īd ibn ‘Abdullah al-Juhanī is majhūl.

Ibn ‘Umar narrated that the Prophet ﷺ said, “The Arabs are equal to themselves: tribe to tribe, quarter to quarter, and man to man, except for a weaver or a cupping practitioner (ḥajjām).”⁸⁹

This is weak because of its inqitā’ between Shujā’ and ibn Jurayj, and there are other ṭuruq for this and they are weak because of the weakness of ‘Imrān ibn Abī al-Faḍl and Sulaymān ibn Abī al-Jawn is majhūl.

Issue: The One Upon Whose Marriage Faskh Occurred

If faskh occurs on a marriage (it being annulled) after its validity because of something that necessitates faskh, the wife is obliged the entire specified mahr. And if no mahr was specified for her, then she is only obliged a mahr equivalent to that of women like her, whether he had intercourse, or not, entered upon her or not.

The decisive evidence for this: The saying of Allah, “And give the women their dowries graciously.” [al-Nisā’: 4]

The mahr becomes obligatory for her after the validity of the contract, whether he has intercourse afterwards or enters upon her or

⁸⁷ Sunan al-Tirmidhī 1085: Ḍa‘īf

⁸⁸ Sunan al-Tirmidhī 171: Ḍa‘īf

⁸⁹ Al-Sunan al-Kubra of al-Bayhaqī 13769: Ḍa‘īf

not. If faskh occurs, her right to the mahr remains, just as if he had died, there is no difference.

Whoever claims that in faskh before intercourse he is only obliged to give her half the mahr has only said that by qiyās with divorce before touching the woman, every single qiyās is false. And even if any qiyās in the world would ever be valid, this would be a false because divorce is an act of the husband, while faskh is not his act. So there is no similarity between faskh and divorce (ṭalāq). Instead, faskh is more like death, because both occur without the husband's choice, while divorce only occurs by his choice. And likewise, those omit the entire mahr in some situations of faskh when the faskh comes from her side, this is a false saying, because it is nullifying something Allah has made obligatory without any decisive evidence. By Allah is success.

Issue: If a Woman is Divorced Before Intercourse

Whoever divorces before intercourse or touching her in general with any touch, it is obligatory to give her half of the mahr that was specified for her. And likewise is if he entered into seclusion with her without intercourse or touching, whether the time spent with her was long or short, this applies to any mahr that is of an unspecified description, such as by number, weight, measure, or a described thing, or in a specific location if found valid. Whether the marriage was done with a mahr specified in the contract itself, or agreed upon afterward, or not agreed upon and then a judge ruled for her the mahr for women she is equivalent to, the same ruling applies.

The decisive evidence for this: The saying of Allah, “And if you divorce them before you have touched them, and you have already specified for them a dowry, then [they are entitled to] half of what you specified.” [al-Baqarah: 237]

This verse is general for every mahr in a valid marriage, whether the man specified it in the contract or afterward. Allah did not say, “half of what you specified in the contract itself,” whoever adds

such a restriction is mistaken, nullifying, and transgressing the limits of Allah.

As for when the judge imposed the mahr she is equivalent to with other women, even if the husband had refused his obligation, the ruling of Allah upon him by His truthful statement: “And give the women their dowries graciously,” [al-Nisā’: 4] obliges him to grant her one of two things, either what she accepted or the mahr she is equivalent with other women. Whichever is binding upon him, whether by his consent or by rightful ruling, has been specified for her, since the marriage contract was concluded with her certainly in the knowledge of Allah, and it became obligatory upon his wealth. We do not know for anyone that opposes this a ḥujjah at all.

And we testify by the testimony of Allah that if Allah had intended by His saying “half of what you specified” [al-Baqarah: 237] only what was in the contract itself, He would have clarified it to us, so there is no doubt in this, and we are certain that Allah intended it in every case.

Those who say, “If he closed a door or let down a curtain, then the mahr becomes obligatory,” we find that those who hold this saying argue with the saying of Allah, “And give the women their dowries graciously.” [al-Nisā’: 4]

They said: So the full dowry is obligatory for her unless there is consensus preventing it.

And they argue with what Ayyūb al-Sakhtiyānī narrated from Sa‘īd ibn Jubayr, “ibn ‘Umar said to me, “The Messenger of Allah ﷺ separated between the two brothers of Banū al-‘Ajlān...” Ayyūb said, “‘Amr ibn Dīnār said to me: ‘There is something in the ḥadīth that I do not see you narrating.’ He said: ‘The man said: ‘My wealth?’” It was said: ‘You have no wealth; if you are truthful, you have consummated with her.’”⁹⁰

⁹⁰ Ṣaḥīḥ al-Bukhārī 5349, 5312: Ṣaḥīḥ

This is not a ḥujjah for them because there is in it, “It was said,” and that is not the saying of the Prophet ﷺ.

And also, ‘Amr ibn Dīnār narrated it with an isnād and did not mention this wording, but as it is narrated from ibn ‘Umar say, “I heard the Messenger of Allah ﷺ say to the two who were doing li‘ān: ‘Your reckoning is with Allah; one of you is lying.’ The man said: ‘O Messenger of Allah, my wealth, my wealth!’ He ﷺ said: ‘You have no wealth; if you are truthful against her, then it is for what you made istiḥlāl of her private part.’”⁹¹

They said, “So consummation with her is making istiḥlāl of her private part.”

We say: This is a deception. Instead, at the very moment of the marriage contract, his istiḥlāl establishes of her private part. If not for the text of the Qur’ān that if he has not touched her until he divorces her, she is entitled only to half the dowry, then the full dowry would have been hers just as it is all hers if he dies or she dies. So it is obligatory not to transgress that.

The same applies to His saying, “And give the women their dowries graciously.” [al-Nisā’: 4]

for this other verse has specified it, so that divorce before touching obligates only half the dowry.

They also tumult with another false narration from Zayd ibn Ka‘b al-Anṣārī, who said: “The Messenger of Allah ﷺ married a woman from Banū Ghifār, and when he entered upon her, he saw on her flank a whiteness, so he said: ‘Put on your clothes and return to your family.’ Al-Qāsim added in his narration: ‘And he ordered for her the full dowry.’”⁹²

This is false because Jameel ibn Yazīd is weak, and even if it would be authentic, there would be no ḥujjah for them in it, because he ﷺ did not say that it is obligatory for her; instead, it is a favor from him,

⁹¹ Musnad al-Ḥumaydī 687: Ṣaḥīḥ

⁹² Sunan Sa‘īd ibn Manṣūr 829: Ḍa‘īf

just as Allah said, “Except when they forego it, or the one in whose hand is the marriage contract foregoes it.” [al-Baqarah: 237]

Just as if she were to show kindness and drop all of her right, she would have done something good.

They also tumult with another narration that is false in which Muḥammad ibn ‘Abd al-Raḥmān ibn Thawbān said, “The Messenger of Allah ﷺ said: ‘Whoever uncovers a woman and looks at her private part, the dowry becomes obligatory.’”⁹³

This is not a ḥujjah for many reasons: It is mursal, and there is no ḥujjah in any mursal narration. And it comes through the ṭarīq of Yahyā ibn Ayyūb and Ibn Lahī‘ah, and both are weak.

As for those who say that if she became pregnant, the child is attributed to him and there is no ḥadd upon her: there is no ḥujjah for them in this, because he did not consummate with her at all, and it is not known that he was alone with her. It is possible that they met in secret and she became pregnant. In that case, the child is attributed to him, and there is no ḥadd in this at all, because she is his firāsh (wife) from the moment the contract is concluded. There is no meaning for intercourse in that, it. Is possible that she becomes pregnant without penetration but only by the discharge being placed between the labia. All of this is not called ‘touching’.

If they cling to the reports from some of the Companions, then there is no ḥujjah in the saying of anyone other than the Messenger of Allah ﷺ. It is obligatory to return to nothing other than the Qur’ān and the Sunnah. And the Qur’ān does not oblige for her, in the absence of touching, except half of the mahr. And Allah grants success.

⁹³ Al-Marāsīl of Abū Dāwud 214: Da‘īf

Issue: Can the Husband Enter Upon His Wife Before Sending Her Mahr

Whoever marries, whether a mahr was specified or it was not specified, he can touch her, have intercourse with her and enter upon her whether she likes it or dislikes it and she must be given what he specified for her as mahr whether he likes it or dislikes it. And he is not prevented because of that from entering upon her. But, it is demanded for him to enter as he wants, and it is demanded for her the mahr whatever he has with him available of it. If nothing was specified for her as mahr, then he is demanded to give her the mahr of women equivalent to her, except if they mutually agree to more or less.

Mālik said: “The husband must not enter upon her (have intercourse) until he gives her, her mahr. If she gifts the mahr to him, he is obliged to give her something else.”⁹⁴

The decisive evidence for our saying is what ‘Uqbah ibn ‘Āmir narrated, “The Prophet ﷺ married a man to a woman with their mutual consent, then the man entered upon her without stipulating for her a mahr and without giving her anything. He was among those who were present at al-Ḥudaybiyyah, and whoever was present there had a share in Khaybar. When death approached him, he said: ‘Indeed, the Messenger of Allah ﷺ married me to so-and-so, and I did not stipulate for her a mahr, and also did not give her anything. But I make you witnesses that I have given her, from her mahr, my share in Khaybar.’ So she took it and sold it for one hundred thousand.”⁹⁵

So we look at what those who prohibit entering upon the wife before giving the mahr argue with and we find them mentioning a ḥadīth in which it is mentioned, “The Messenger of Allah ﷺ prohibited ‘Alī from entering upon Fāṭimah until he gives her something.”⁹⁶

⁹⁴ Al-Mudawwanah 2/130 | 2/176

⁹⁵ Sunan Abī Dāwud 2117: Ṣaḥīḥ

⁹⁶ Sunan Abī Dāwud 2126: Ḍa‘īf

This narration is not authentic, because it has only come as mursal, and others through weak and unknown narrators like Ghaylān ibn Anas.

Nothing is authentic except what Ibn ‘Abbās narrated, “‘Alī said: ‘I married Fāṭimah, so I said: ‘O Messenger of Allah, allow me to enter upon her.’ He said: ‘Give her something.’ I said: ‘I have nothing.’ He said: ‘Where is your ḥuṭamiyyah armor?’ I said: ‘It is with me.’ He said: ‘Then give it to her.’”⁹⁷

This is only with the meaning that he was obliged to pay her mahr, not that it is not permissible to enter until giving her something, the decisive evidence for that is the authentic narration we just mentioned in which the Prophet ﷺ acknowledged the man entering upon her without giving her the mahr.

Allah, Exalted and Majestic, said, “Except with their wives or those whom their right hands possess, for then they are free from blame.” [al-Mu’minūn: 6]

And there is no disagreement among any of the Muslims that from the moment the nikāḥ is done, she is his wife he is permissible for her and she is permissible for him. Whoever prevents her from him until he gives her the mahr or something else has placed a barrier between him and his wife without any text from Allah, Exalted is He, or from His Messenger ﷺ. Instead, the truth is what we have said: that he must not be prevented from his right to her, and she must not be prevented from her right to her mahr. He is permitted to enter upon her whether she likes it or dislikes it and her mahr is taken from whatever he possesses of it, whether he likes it or dislikes it.

And it is authentically narrated from the Prophet ﷺ that he acknowledged the saying, “Give everyone who has a right his right.”⁹⁸ And with Allah, Exalted is He, lies success.

⁹⁷ Al-Mujtaba 3375: Ṣaḥīḥ

⁹⁸ Ṣaḥīḥ al-Bukhārī 1968: Ṣaḥīḥ

Issue: Concluding the Marriage (Contract) Based on a False Condition or a Corrupt Dowry

Any nikāḥ that is concluded upon a false mahr or upon any false condition, such as delaying the mahr, or that it must be khamr, or swine, or for something that is permissible to own, or something that is owned by someone else, or stipulating that he must not marry another wife over her, or that he will not take a concubine over her, or that he will not move her from her place of residence or from her home, or that he will not be absent for more than a specific amount of time, or that he will free his slave-woman, or that he will spend on her child, or that the second woman he marries will be divorced, and also every single condition that is not in the Qurʿān and Sunnah. Then such a marriage is false, annulled (mafsūkh), even if it they were in that state for a long and even if she has from him children. There is no inheritance between them, no obligation of maintenance/spending (nafaqah), no mahr, and no ʿiddah.

The same applies to any invalid marriage except in the case of a woman who married without the permission of her walī out of ignorance and he consummated the marriage with her: if he had specified a mahr for her, she is obliged to that which he specified; if no dowry was specified, she must get the dowry of women equal to her. If he did not touch her, then she is entitled to nothing.

If the corrupt mahr or corrupt conditions were only agreed upon after a valid marriage contract free from any condition not in the book of Allah, then the marriage remains valid and complete, and the corrupt mahr is annulled, and she is given the mahr of women equal to her, except if they mutually agree to more or less, which is permissible, and all such conditions are false.

The decisive evidence of that is the saying of the Messenger of Allah ﷺ, “Every condition that is not in the Book of Allah is false.”⁹⁹

⁹⁹ Ṣaḥīḥ al-Bukhārī 2168: Ṣaḥīḥ

All these conditions are not in the Book of Allah, Mighty and Majestic, so they are false.

Likewise, the delaying of the mahr or any part of it as a condition, because it is not only a condition not in the book of Allah at all, but also because Allah the Exalted says, “And give the women their dowries graciously.” [al-Nisā’: 4]

So whoever stipulates that he will not give her mahr or part of it for a period has stipulated contrary to what Allah ordered in the Qur’ān, and even without this it is not a condition in the book of Allah.

And the saying of the Messenger of Allah ﷺ: “Whoever performs an action not in accordance with our matter, it is rejected.”¹⁰⁰

Both narrations are authentic and well-known. Everything we have mentioned here is not in accordance with the order of the Messenger of Allah ﷺ, so it is invalid and rejected, as his own words ﷺ and by necessity of the ‘aql for everyone with ‘aql knows that anything whose validity depends on the validity of something invalid then that is invalid.

So every nikāḥ of which its validity is made on the validity of what is not valid is not valid. And as it is not valid, then she is not a wife. And as she is not a wife: and the man knew of its falsehood then he is obliged the ḥadd of zinā, and the child is not attributed to him, because the Prophet ﷺ said: “The child belongs to the firāsh, and for the male fornicator is the stone.”¹⁰¹

So there is nothing except firāsh or ‘ihr; as it is not a firāsh, then it is ‘ihr (fornication), and no child is attributed in fornication, and the ḥadd in it is obligatory.

If he was ignorant (of the ruling), then there is no ḥadd upon him and the child is attributed to him, because the Messenger of Allah ﷺ brought the truth, and people continued entering Islam while among them were valid and invalid marriages, such as combining two sisters, marrying more than four wives, or marrying a father’s wife. He ﷺ

¹⁰⁰ Ṣaḥīḥ Muslim 1718: Ṣaḥīḥ

¹⁰¹ Ṣaḥīḥ al-Bukhārī 6818: Ṣaḥīḥ

annulled all of that but attributed the children to the father in these cases. So the child is attributed to the one ignorant of the ruling, as we have mentioned.

And also we have said before that the default is attributing the child to the father, and nothing prevents that except the text describing him a fornicator and a man is not a fornicator except after knowing the ruling.

As for our exception for the case of the woman who was married without the permission of her walī, her marriage is invalid, because of the established authentic narration we mentioned before in which is the saying of the Prophet ﷺ, “A woman must not be married off without her walī. If she is married (without a walī), then her marriage is false, false, false. If he has intercourse with her (after such a marriage), then the mahr is hers for what he has taken from her. And if they dispute, then the ruler is the walī of the one who has no walī.”¹⁰²

The saying of the Prophet ﷺ, “Fal-mahru lahā (the dowry is hers),” is definite (with alif and the lam).

And his saying, “Fal-mahru lahā (the dowry is hers),” attributes the dowry to her. These two words oblige the accustomed mentioned mahr given to her. And a mahr for her if it is not mentioned by the husband and wife, which is that which is equivalent to her.

And it is not allowed to move this ruling here for every single false nikāḥ because that is qiyās and every single qiyās is false.

And the Prophet ﷺ said, “Indeed, your blood, your property, and your honor are prohibited for you,”¹⁰³ establishes that her taking any of his property is prohibited except if a text specifically permits it and Allah said, “And your Lord is never forgetful” [Maryam: 64].

We bear witness by the testimony of Allah, the Mighty and Majestic, that if Allah, Exalted be He, had intended to make from intercourse in an invalid marriage a mahr, He would have clarified it in His Book, or by the tongue of His Messenger ﷺ just as He clarified it

¹⁰² Musnad Aḥmad 24205, 40/243: Ṣaḥīḥ

¹⁰³ Ṣaḥīḥ al-Bukhārī 6043: Ṣaḥīḥ

regarding a woman married without the permission of her walī. He would not restrict it to this only to confuse His servants, and Allah is far removed from such injustice.

If they say, “But Allah said: ‘Whoever transgresses against you, you may transgress against him in the same manner that he transgressed against you.’ [al-Baqarah 2:194] and He says: ‘And the violations must be recompensed.’ [al-Baqarah 2:194], and that consummation in an invalid marriage is a transgression and a violation, then is it required to retaliate in property in the same manner, or to seek recompense in property likewise?”

We say: The word of Allah, Exalted be He, is the truth, and your conclusion from it is false; because Allah, Exalted be He, obliged that the transgressor must be punished and that qīṣāṣ must be applied against the transgressor in the same manner he transgressed. Property is not equivalent to private parts, except if a text comes for that which must then not be transgressed.

And if the matter would be as they claim, then it would imply that the one that hits another or insults him that qīṣāṣ must be made against him in his wealth and that transgression must be made on his property. And it would also oblige the one that has zinā with a woman or has sodomy with a boy that he must be obliged a fine for what he has done from transgression in these. And this is the ruling of satan, and the transgressing police and the sinful guards, they are not the ruling of Allah and also not his Prophet ﷺ. The only ruling of Allah and the ruling of his Messenger is to not exceed His limits. If He rules a fine against someone we rule by that. And if He does not rule that, we do not rule that. And by Allah, Exalted be He, is all success.

Every marriage in the world is either valid or invalid; there is no third category. A valid marriage is always valid, except if the Qurʾān or Sunnah oblige its faskh in which case it is annulled once the condition specified by the text occurs. As for an invalid marriage, it is never valid, and intercourse does not make it permissible, and also the

passage of time or the birth of children does not make it permissible, it is prohibited forever.

As for any contract that is valid and after the validity they bring false conditions, then the marriage contract remains valid; and because it is valid, it cannot be annulled except by Qur‘ān or Sunnah. Because the prohibited cannot make the permissible prohibited, and there is no difference; but only those invalid conditions are annulled, and the judgment of whoever enforced them is annulled. Truth is truth, and falsehood is falsehood. Allah, Exalted be He, said: “So that He may establish the truth and abolish falsehood, even if the criminals dislike it” [al-Anfāl: 8], and He also said: “And Allah establishes the truth by His words” [Yūnus:82]. And by Allah, Exalted be He, is all success.

If they mention the Ḥadīth of ‘Uqbah ibn ‘Āmir, “The Prophet ﷺ said: ‘The most binding of conditions upon you is that you fulfill it in what you have made the private parts permissible with.’”¹⁰⁴

We say: There is only in this narration the obligation of fulfilling what is a condition for nikāḥ from texts such as the mahr and the walī .

If it is said, “We acknowledge with you the narration in which the Prophet invalidated any condition that is not in the book of Allah, but this only indicates that such conditions are false meaning prohibited. Not that they invalidate the contract.”

We clarified the answer to this before and that is that we say: So this is the first category which we mentioned is an exception in which the premise comes first, meaning that the first premise is the one we affirm as true, after it is made a condition that if the first is valid, then the one of which the validity is connected to it is also valid by its validity. And if the first is invalid, then the one of which the validity is connected with its validity is invalid. This is necessary (wājib) by the sources of the necessary ‘aql: as everything that cannot be valid except till something else is valid, then if that other thing is not valid, then it

¹⁰⁴ Ṣaḥīḥ al-Bukhārī 5151: Ṣaḥīḥ

is obligatory by necessity that it is not valid for what has no validity except by the existence of validity that did not exist. From this necessary *aṣl*, decisive evidence, we invalidate in the Sharī'ah every single contract connected to an invalid condition that is invalid: marriage, divorce, sales, emancipation, and all other contracts (all of them are invalid). And likewise, if the latter (premise) cannot exist except through the existence of the former (premise), and the former does not exist, then the latter thing does not exist.

Issue: Everything That is Permissible to be Owned Through a Gift or Inheritance is Permissible to be a Mahr

Everything that is permissible to be owned through a gift or inheritance is permissible to be a mahr, or for *khul'* to be concluded with it, or for it to be used as payment in hiring (*ijārah*), whether its sale is permissible or not, such as water, a dog, a cat, fruit that has not yet shown ripeness, or ears of grain before they harden. Because marriage is not a sale. This is something that no one with perception doubts.

Some of the heedless have said, "It is not permissible for the mahr to be something which selling is not permissible."

This is a corrupt ruling without any decisive evidence, not from the Qur'ān, and also not the Sunnah.

And I wonder what has he sold or what has he bought? Her? Then selling a free person is not permissible. Or her private part? That is even clearer in being prohibited, and that is what he by the Word of Allah ﷻ has made *istiḥlāl* of her private part which was prohibited for him before marriage. Just as she has made *istiḥlāl* by the Word of Allah ﷻ his private part which was prohibited for her before marriage. So it is a private part for a private part, and skin for skin, and Allah ﷻ has obligated upon him alone the mahr in addition to making permissible for him her private part.

And a sale is not like this. A sale is a body exchanged for a body, one being a price and the other a priced commodity with no addition for either party over the other.

So it is clear to anyone with ‘aql the corruption of the statement of those who liken marriage to sale.

And also, a sale without mention of a price is not permissible, while a marriage without mention of a mahr is permissible and valid. It is astonishing that they prohibit marriage with the mahr being fruit that has not yet shown ripeness, by qiyās of it with sale, and then they permit marriage with a servant, a house, or a slave, all without specifying anything about them while according to them, it is not permissible to sell a servant, a house, or a slave without specification or description. This, as you can see, and we seek refuge with Allah from stumbling into error in religion.

Issue: Anything That Has a Value, Whether Small or Large, is Permissible to be a Mahr

It is permissible for anything that has a value, whether small or large, to be a mahr, even if it would be a single grain of wheat or a single grain of barley or anything else. Likewise, any permissible described act such as teaching something from the Qur’ān, or from knowledge, or building, or sewing, or anything else if both of them agree to it, is valid.

And the Mālikī says, “Marriage is the permissibility of a private part, and it is a part of her body, so it is necessary that it must not be permissible except with that for which the hand would be cut off in stealing. So the mahr is the amount for which the hand is cut.”

And they mention a narration from Jābir ibn ‘Abd Allāh, from their father, from the Prophet ﷺ who said, “There is no mahr less than ten dirhams.”¹⁰⁵

The answer: They have no ḥujjah except what we have mentioned and that narration is fabricated without doubt. One of them is through Ḥarām ibn ‘Uthmān who is at the utmost level of weakness, and it is not permissible to narrate from him.

The other is through Mubashshir ibn ‘Ubayd al-Ḥalabī who is a liar, well-known for fabricating lies upon the Messenger of Allah ﷺ, from al-Ḥajjāj ibn Arṭāh who is weak. And even if it would be authentic, they oppose it, because they permit marriage for a dīnār that does not equal ten dirhams. So all of their claims are false.

As for their saying, “It is qiyās to the cutting of the stealers hand.”

This is the most foolish qiyās in the world because there is no similarity between marriage and stealing. And also, the hand is cut off, while the private part is not cut off; marriage is an act of obedience, and stealing is a sin. If they would make qiyās between the permissibility of the private part and the permissibility of the back (by lashing) in the ḥadd for consuming khamr, it would be even deeper into the disgrace and absurdity of qiyās because both are private parts that are covered and not cut off.

And it has never been authentically established that there is no cutting of the hand for less than ten dirhams, so this is certain falsehood built upon falsehood, and an error from another error so this corrupt statement falls apart.

Mālik said, “The mahr must not to be less than three dirhams.”

And they made qiyās with the cutting of the hand and clarification of the falsehood of this statement has already passed.

And there has never come any text that there is no cutting for less than three dirhams.

¹⁰⁵ Aḥkām al-Qur‘ān 3/87: Ḍa‘īf

What is only authentically established from the Prophet ﷺ is that cutting occurs for a quarter of a dīnār and above¹⁰⁶.

And they do not regard, in either cutting or in mahr, the value of a quarter dīnār at all so the falsehood of all they have said becomes clear with certainty, without any doubt.

The Mālikīs have also tried to deceive by mentioning the verse, “And whoever among you cannot afford to marry free, believing women, then [let him marry] from those whom your right hands possess, believing slave women.” [al-Nisā’: 25]

They said, “If the mahr could be whatever is little or much, then everyone would have the means to marry a free believing woman.”

We say: Instead it is possible for it to exist and there is in it nothing that establishes the least amount at all. We do not doubt that the one saying this was not in a state of piety and fear of Allah ﷻ when he said it. Because they do not differ over that it is not permissible for the mahr of a married slave woman to be less than that of a free woman, then how can they after that differentiate between the presence of means to marry a free woman and the presence of means to marry a slave woman? We seek refuge with Allah from deception in the religion of Allah Almighty, intentionally pursuing what we know to be false.

Some of them said, “How can it be permissible for the mahr to be whatever is little or much, while the parting gift (mut‘ah) in divorce is only limited?”

We say: Because Allah ﷻ has not set a limit for the mahr except what the two agree upon, while He has set a limit for the mut‘ah in divorce, “For the wealthy according to his means, and for the poor according to his means.” [al-Baqarah: 236]. The difference between the two matters is clearer than the sun to whoever does not transgress the limits of Allah ﷻ.

¹⁰⁶ Al-Mujtaba 4919: Ṣaḥīḥ

And the strangest thing is the statement of some of them, “Indeed Allah Almighty has magnified the matter of mahr, so it is not allowed for it to be little.”

We say: This is truly strange. Allah ﷻ only magnified the matter of mahr in obligating its payment and prohibited taking it without her consent and this exist for every right/obligation. Allah Almighty said, “So whoever does an atom’s weight of good will see it. And whoever does an atom’s weight of evil will see it.” [al-Zalzalah: 7-8].

And it has been authentically reported from him ﷺ: “Protect yourselves from the Fire, even with half of a date.”¹⁰⁷

And there is nothing greater than protecting oneself from the Fire.

And it has been authentically reported from the Prophet ﷺ: “Whoever swears on my pulpit with a false oath, the Fire will be binding upon him, even if it be over a stick from an arāk tree.”¹⁰⁸

Then, the strangest thing is, from where did they get the idea that three dirhams is a lot, but that three dirhams minus a grain is little? And the confusion of these groups is more than can be counted except by the One who counts their breaths.

So as the falsehood is evident we will now mention the decisive evidences for our saying.

Allah said, “And give the women their dowries graciously.” [al-Nisā’: 4]

And He, the Exalted, said, “And give them their due compensation (ujūrahunna) according to what is reasonable.” [al-Nisā’: 25]

And He, the Exalted, said, “And if you divorce them before you have touched them, and you have already specified for them a dowry, then [give them] half of what you specified.” [al-Baqarah: 237]

Allah did not mention anywhere in His Book that the mahr has a set minimum and also not His Prophet, instead He left it as general

¹⁰⁷ Al-Mujtaba 2552: Ṣaḥīḥ

¹⁰⁸ Sunan Abī Dāwud 3246: Ṣaḥīḥ

and any amount is then sufficient. Allah said, “And your Lord is never forgetful.” [Maryam: 64]

And we bear witness with the testimony of Allah, “In the worldly life and on the Day when the witnesses will stand.” [Ghāfir: 51] that if Allah had intended to set a limit for the mahr below which it is not allowed to go, He would not have neglected it.

And the established Sunnah from the Messenger of Allah ﷺ, as Sahl ibn Sa’d narrated, “A woman came to the Messenger of Allah ﷺ and mentioned the ḥadīth, in which a man stood and said: ‘Marry her to me if you have no need of her.’ He ﷺ said: ‘Do you have anything to give her as a ṣadāq?’ He said: ‘I have nothing except my izār.’ The Messenger of Allah ﷺ said: ‘If you give it to her, you will have no izār to wear. Look for something [else].’ He said: ‘I find nothing.’ He ﷺ said: ‘Look, even if it be a ring made of iron.’ He looked and found nothing. He ﷺ said: ‘Do you have any of the Qur’ān with you?’ He said: ‘Yes, such-and-such sūrah and such-and-such sūrah.’ He ﷺ said: ‘I have married her to you with what you have of the Qur’ān.’”¹⁰⁹

And Sahl ibn Sa’d narrated, “That the Messenger of Allah ﷺ said to a man: ‘Marry, even if with a ring made of iron.’”¹¹⁰

And Sahl ibn Sa’d narrated, “A woman came to the Messenger of Allah ﷺ and said: ‘O Messenger of Allah, I have gifted myself to you, so do with me as you wish.’ A young man with him said: ‘O Messenger of Allah, if you have no need of her, marry her to me.’ He ﷺ said: ‘Do you have anything to give her?’ He said: ‘I do not know of anything.’ He ﷺ said: ‘Go and search, perhaps you will find something, even if a ring of iron.’ He came back and said: ‘I found nothing except this izār of mine.’ He ﷺ said: ‘If you give her your izār, you will have nothing to wear.’ He asked: ‘Do you recite Umm al-Qur’ān?’ He said: ‘Yes.’ He ﷺ said: ‘Then go, I have married her to you, and teach her from the Qur’ān.’”¹¹¹

¹⁰⁹ Ṣaḥīḥ al-Bukhārī 5871: Ṣaḥīḥ

¹¹⁰ Ṣaḥīḥ al-Bukhārī 5150: Ṣaḥīḥ

¹¹¹ Ṣaḥīḥ Muslim 1425, 77: Ṣaḥīḥ

This ḥadīth is well-known and has been transmitted with tawātur through the ṭarīq of thiqāt. It is also narrated through Ya‘qub ibn ‘Abd al-Raḥmān al-Qārī, ‘Abd al-‘Azīz ibn Muḥammad al-Darāwardī, Sufyān ibn ‘Uyaynah, Ḥammād ibn Zayd, Ma‘mar, Muḥammad ibn Muṭarrif, Fuḍayl ibn Sulaymān, and others, all of them from Abū Ḥāzim from Sahl ibn Sa‘d from the Messenger of Allah ﷺ.

Then some objected, who do not fear Allah ﷻ and also do not feel ashamed of lying in this matter, and said: “The Messenger of Allah ﷺ only obliged him with a ring of iron adorned of which the value is ten dirhams of silver, or three dirhams of pure silver.”

This is a statement that makes a bereaved woman laugh and casts suspicion upon its speaker. It is a mere claim that never took place at all. Then how when it is what Allah ﷻ never created in the world: that there could be a ring of iron weighing two dirhams worth what they mentioned, especially in al-Madīnah. Everyone with any discernment knows that their ploughshares and spades for digging the ground, their saws and axes for cutting wood, their sickles for working the palm trees and harvesting crops, their ploughing tools, their manure forks, their armor and their spears are all made of iron. So how can they attribute to the Prophet ﷺ such a foolish lie? We ask Allah for safety.

They also objected to the mahr being the teaching of the Qur’ān, by mentioning a narration through ‘Abd al-Raḥmān ibn Shibl al-Anṣārī who said, “I heard the Messenger of Allah ﷺ say: ‘Recite the Qur’ān and do not exaggerate in it, and do not neglect it, and do not eat by it, and do not seek abundance through it.’”¹¹²

And also by mentioning a narration through Ubayy ibn Ka‘b that he taught a man the Qur’ān and the man gifted him a horse, so the Messenger of Allah ﷺ said to him: “Do you wish to come to Allah on the Day of Resurrection with a collar of fire around your neck?” And in some narrations, “If you wish to be encircled with a collar of fire,

¹¹² Al-Muṣannaf of ibn Abī Shaybah 7825: Ḍa‘īf

then accept it.” And in some: “A burning ember between your shoulders, which you will wear or hang.”¹¹³

These are weak narrations. As for the ḥadīth, “Do not eat by it,” it is through Abū Rāshid al-Ḥubranī who is majhūl. And even if it would be authentic, there would be no ḥujjah for them in it, because “eating” is of two kinds: eating from the truth, and eating with falsehood. And eating with right is good.

The Messenger of Allah ﷺ and his companions went to al-Madīnah, like Muṣ‘ab ibn ‘Umayr and others teaching the Anṣār the Qur’ān and the religion, and the Anṣār would spend on them.

Allah ﷻ said, “They are the ones who say, ‘Do not spend on those who are with the Messenger of Allah until they disperse.’” [al-Munāfiqūn: 7]

Allah severely condemned those who prohibited spending on the companions of the Messenger of Allah ﷺ.

As for the ḥadīth of Ubayy ibn Ka‘b, it has not come except through al-Aswad ibn Tha‘labah who is majhūl. And Baqiyyah who is weak and al-Mughīrah ibn Ziyād who is weak. And it is mursal as Abū Idrīs al-Khawlanī did not witness the matter.

And they tumult with the false narration from Abū al-Nu‘mān al-Azdī, who said, “The Messenger of Allah ﷺ married a woman with a mahr of a sūrah from the Qur’ān, then said: ‘It will not be a dowry for anyone after you.’”¹¹⁴

This is a fabricated narration, with three defects: The first is that it is mursal, and never is a mursal a ḥujjah as it was narrated by Shu‘bah from Ayyūb. The second is that Abū ‘Arfajah al-Fāshī is majhūl; no one knows who he is. And the third is that Abū al-Numān al-Azdī is also majhūl; no one knows him.

Some have tumulted by mentioning a narration in which Abū Ṭalḥah married Umm Sulaym on the condition that she would teach him Qur’ān, and that she had no mahr other than that.

¹¹³ Bayān al-Wahm wal-Īhām 3/531

¹¹⁴ Sunan Sa‘īd ibn Manṣūr 642: Ḍa‘īf

This is not a ḥujjah for them for two reasons: The first is that this occurred before the Hijrah of the Messenger of Allah ﷺ, because Abū Ṭalḥah was among the early Muslims, one of the first of the Anṣār to accept Islam, and at that time the obligation to give women their mahr had not yet been revealed. And the second is that the narration does not indicate that the Messenger of Allah ﷺ knew of this arrangement.

And some claim it was specific to him ﷺ.

This is false, and the decisive evidence for that is the words of Allah, the Exalted, “Indeed, there is for you in the Messenger of Allah an excellent example.” [al-Aḥzāb: 21]

So whatever the Messenger of Allah ﷺ did is an example for us; the merit, reward, and excellence are in acting similarly by following him. Anyone who prevents themselves from this is in error, and anyone who refrains from his Sunnah wrongs themselves and destroys themselves. It is only specific for him if there is text in the Qur’ān or an authentic Sunnah that it was only for the Messenger ﷺ, and then it is not permissible to act upon it.

The wonder is that these people come to the actions of the Messenger ﷺ, and he did not tell the believers that they were specific for him ﷺ, then they say: “It was specific for him ﷺ.”

Then they come to the marriage of the gifted woman, in which Allah has made it clear that it was specific to him ﷺ, and then they say: “It is general for everyone.” We seek refuge in Allah from what they have been led astray by.

Some asked, “What if he divorced her before consummation?”

We say: If he taught her the surah that counted as her dowry, she has fully received her mahr, and there is no way against him, because the ‘araḍ has already been completed.

If he had not taught it, he must teach her half, and teaching the ajnabiyyah woman is not prohibited for anyone and also the Mothers of the Believers have spoken to people themselves.

Anas ibn Mālik narrated, “‘Abd al-Raḥmān ibn ‘Awf said to the Messenger of Allah ﷺ: ‘I married a woman from the Anṣār.’ The Messenger of Allah ﷺ asked: ‘What did you give her?’ He said: ‘The weight of a seed of gold.’ The Messenger of Allah ﷺ said: ‘have a walīmah, even if it is a sheep.’”¹¹⁵

And Ḥumayd narrated from Anas, “That was two dāniqs of gold.”¹¹⁶

The dāniq is one-sixth of the dirham of Ṭabarī which is the Andalusian standard so two dāniqs weigh one-third of an Andalusian dirham, which is one-sixth of a mithqāl of gold. This is an authentic, musnad narration.

If it is said, “But Ḥajjāj ibn Arṭāh narrated from Qatādah, from Anas regarding the seeds of gold mentioned in the narration that it was counted as three dirhams.”¹¹⁷

We say: Ḥajjāj is not a thiqaḥ, and his narration does not stand against the narration of ‘Abd al-Razzāq.

Issue: A Woman is Not Compelled to Prepare For the Husband Anything

It is not permissible to compel a woman to prepare for her husband with anything at all, not from her mahr that he gave her, and also not anything else from her wealth. The entire mahr is hers; she can do with all of it whatever she wishes. The husband has no right of permission or objection in that.

Mālik said, “If he gave her dīnār or dirhams as mahr, she is compelled to purchase with all of that a set of clothing, bedding, and jewellery to beautify herself for him, and it is not permissible for her to use it to pay a debt upon her except up to three dinars or less. If he gave

¹¹⁵ Ṣaḥīḥ al-Bukhārī 3937: Ṣaḥīḥ

¹¹⁶ Al-Muṣannaf of ‘Abd al-Razzāq 10411, 6/178

¹¹⁷ Sunan Sa‘īd ibn Manṣūr 613: Ḍa‘īf

her unminted gold or unminted silver, then it is hers, and she is not compelled to buy a set of clothing with it at all. If he gave her jewelry, she is compelled to adorn herself with it for him. If he gave her clothing and bedding, she is compelled to wear them in his presence, and she is not entitled to clothing from him until a period passes in which those garments wear out.”¹¹⁸

Mālik’s saying is enough falsehood by the great contradiction in it, and him making differences between the cases without any decisive evidence from Qur’ān and Sunnah.

The decisive evidence for the correctness of our saying is the saying of Allah ﷻ, “And give the women their bridal due as a free gift; but if they willingly remit to you any part of it, then consume it in satisfaction and ease.” [al-Nisā’: 4]

So Allah, Mighty and Majestic, obliged men to give women their mahrs as a gift, and He did not permit men to take anything from it except with the women’s willing consent. What further clarification after this could we desire? And how could a Muslim’s soul be content to oppose this statement in favor of a corrupt, contradictory saying?

And we find that Allah, Mighty and Majestic, has obligated the husband for the woman rights in the wealth of her husband, whether he likes it or dislikes it and these are: the mahr, the nafaqa (maintenance), the kiswah (clothing), and the iskān (housing) as long as she remains in his marriage, and the mut’ah (parting gift) if he divorces her. And Allah has not granted the husband any right whatsoever in her wealth, not little and also not much.

And nothing is more absurd than their claim that the husband is not obliged to provide her clothing (kiswah) as long as she is able to clothe herself from her mahr, but they do not omit the obligation on him of maintenance (nafaqa) for her as long as she can spend on herself from her mahr! Has anything more corrupt and invalid ever been heard?

¹¹⁸ Al-Mudawwanah 2/157-159

Some even objected citing the saying of Allah, “Men are in charge of women (qawwāmūn), by virtue of that with which Allah has favored some over others.” [al-Nisā’: 34]

We say: Allah, Mighty and Majestic, has spoken the truth. It is not permissible to distort His words from their proper places, and also not to attribute to Him what He did not say and this is among the gravest of sins.

The naṣṣ of this verse only indicates that Allāh has given men some authority and rights and these rights are what have come in other authentic texts. So there is in this verse no mention of his authority (qiyām) over any of her wealth, and also not him judging with his ra’ī and also not spending in accordance with that. So there is only in this verse that he houses her where he resides, prevents her from going out except for necessities, and relocates her where he relocates. These are the rights that have come in other texts and are then the intended meaning here. There is no difference that it is not upon its generality.

They also tumult by using the established narration from the Messenger of Allah ﷺ, “A woman is married for four (things): for her wealth, her lineage, her beauty, and her religion. So obtain the one of religion, may your hands become dust-covered.”¹¹⁹

This is very astonishing and there is nothing like it.

Firstly, the Messenger of Allah ﷺ did not order that a woman must be married for her wealth, and he also did not ever recommend that, and he also did not approve it. Instead, he only mentioned it as information about what people do, and these are the actions of greedy people, whose actions are blameworthy. And instead there is in the narration his ﷺ rejection of that by his saying ﷺ, “So obtain the one of religion.”

So he did not order for her to be married for anything from that except for the religion only.

¹¹⁹ Musnad Aḥmad 14237, 22/140-141: Ṣaḥīḥ

And if they mention the narration from Anas in which he mentioned the marriage proposal of ‘Alī and Fāṭimah saying, “‘Alī sold his armor for four hundred and eighty [dirhams]. I brought it to the Messenger of Allah ﷺ and placed it in his lap. He took a handful from it and said: ‘Bilāl, acquire something pleasant with it,’ and he ordered them to prepare it [for Fāṭimah].” He said, “They made for us a bed with a decorated strap and a pillow made of leather stuffed with fiber, and they filled the house with sand.”¹²⁰

This is not a ḥujjah for them because it is weak because of the weakness of Yaḥyā ibn Ya‘la al-Aslamī, and Sharīk and also Muḥammad ibn Ṭalḥa. And then also the inqitā’ as Khaythamah ibn ‘Abd al-Raḥmān did not hear from ‘Ā’isha.

So the corruption of their statement is apparent. And all praise is due to Allah, the Lord of the worlds.

Issue: The Husband Must Provide Clothing for the Wife

It is obligatory upon the husband to provide clothing for the wife from the moment the Nikāḥ occurred, and also her maintenance, and what she needs to walk, cover herself with, and bedding, and her housing. And this is the case whether she is young or old, has a father or is an orphan, wealthy or poor, whether he has been invited to consummate the marriage or not, whether she is a sinner or not, whether she is free or a slave, whether she has been settled with him in a house or has not been settled.

The decisive evidence for this is what Jābir ibn ‘Abd Allāh, “That the Messenger of Allah ﷺ said in his khuṭbah on the Day of ‘Arafah: ‘So fear Allah concerning women, for you have taken them by the trust of Allah, and you have made their private parts permissible by the word of Allah. And you have over them that they must not let anyone you dislike tread upon your bedding. If they do that, then strike

¹²⁰ Ṣaḥīḥ ibn Ḥibbān 6944, 15/393-394 | Sunan Abī Dāwūd 2128: Ḍa‘īf

them with a striking that is not severe. And they have as an obligation for you their provision and their clothing in accordance with what is good.”¹²¹

So the Messenger of Allah ﷺ made this general for all women, without specifying the disobedient from the obedient, and also not the young from the old, and also not the slave from the free who has been provided a house, and He ﷺ said, “And he does not speak from desire. It is nothing but a revelation that is revealed.” [al-Najm: 3–4]

And He said, “And your Lord is never forgetful.” [Maryam: 64]

It is narrated from about five Tābi‘īn that there is no maintenance (nafaqah) for a sinful wife.

And this is false, there is no ḥujjah for anyone that claims this and there is no ḥujjah except in the ruling of Allāh and His Messenger ﷺ only.

If it is said: “Maintenance is in return for intercourse and obedience.”

The answer: No, this saying is a lie for which there is never anything from the Prophet ﷺ. And there is no disagreement about the obligation of maintenance upon the sick woman with whom intercourse is not possible.

And Allah has clarified what is obligatory regarding the sinful wife, He said, “As for those women whom you fear their sin, admonish them, then forsake them in the sleeping places, and then strike them. But if they obey you, then do not seek a way against them.” [al-Nisā’: 34]

So Allah, informed that nothing is obligatory to be done against the sinful woman except forsaking and striking. He did not omit the obligation of maintenance for her and also not the obligation of providing clothes for her.

¹²¹ Ṣaḥīḥ Muslim 1218, 147: Ṣaḥīḥ

Yet you have punished the women by preventing them their right and this is a shar' in the religion which Allah has not permitted, so it is false.

If they say, "She is an oppressor by being sinful."

We say: Yes, and not every oppressor is permissible to prevent from his wealth/property, except if there is a text about it. Otherwise, it is not the ruling of Allah; but the ruling of Satan, and the injustice of officials and police.

And the most astonishing of all is that they do not nullify a loan she lent him by her sin! So what is the fault of the obligation of maintenance for her that it is omitted while her other rights remain? Indeed, this is an astonishing wonder.

And Mālik said: "There is no maintenance obligatory upon the husband until after calling to consummation."¹²²

This ruling is a mere claim without any decisive evidence for its correctness, not from Qur'ān and also not from the authentic Sunnah. And we have clarified that the established Sunnah came in opposition to it, so it is invalid. And by Allah, Exalted is He, is success.

Issue: Divorce Before Consummation While a Specified Mahr Was Agreed Upon and Accepted

It is not permissible for the father of a virgin, whether young or old, and also not the father of a previously married woman, and also not for any other relative of her, or anyone else, to have any ruling over anything of the mahr of his daughter or relative. None of them are allowed to gift it, or any part of it, and also not to the husband, whether he divorces or keeps her, and also not to anyone else. If they do any of that, it is null, void, and rejected forever. As for her, she can gift her mahr, or any part of it, to whomever she wants. Neither father and also

¹²² Al-Mudawwanah 2/177

not the husband can object to that. And this, about her mahr, is specifically if she is sane and reached puberty and would have after spending enough be able to survive.

And the meaning of the saying of Allah ﷻ, “Then half of what you prescribed (as mahr), unless they forgo, or the one in whose hand is the bond of marriage forgoes,” [al-Baqarah: 237] is only that: if the husband divorces his wife before touching her and he had specified a mahr for her that she accepted then she is entitled to half of that mahr which was specified for her, except if she pardons and takes nothing from him, gifting him the half that was obligatory to her; or unless the husband pardons and gives her the full amount. Whichever of them does that, that is closer to taqwā.

Mālik said, “The one in whose hand is the bond of marriage forgoes (as mentioned previously in the verse) is specifically the master of the slave woman and the father of the virgin.”¹²³

The answer: This is corrupt and the farthest away from what the verse necessitates. And we bear witness by the testimony of Allah, Mighty and Majestic, that had Allah, Exalted is He, intended by His saying, “Or the one in whose hand is the bond of marriage forgoes” [al-Baqarah: 237] the master of the slave woman and the father of the virgin specifically, He would not have concealed it and also not withhold it without clarifying it in His Book or upon the tongue of His Messenger ﷺ.

If it is said: “The marriage of the slave woman and the virgin is not valid except by their contract (of the master and the father).”

We say: Yes. And it is also not valid except with the approval of the husband, otherwise it is no. So his authority in that is equal to the authority of the master and the father in the exact same manner. Whoever gives precedence the slave master and the walī in being the one that holds the bond of marriage over the husband, makes takhṣiṣ of

¹²³ Al-Muwatta’ bi Riwayah Yahyā al-Laythī 1504, 2/32

the verse without any decisive evidence from Qur'ān, and also not any authentic Sunnah, then this statement falls altogether.

As for those who say, “The one in whose hand is the bond of marriage forgoes (as mentioned previously in the verse) is the walī.”

The answer: We find the awliyā' to be of two categories: The first, the father of the virgin and the master of the slave woman. The share of these two in the bond of marriage being in their hands is like the share of the husband in the bond of marriage being in his hand, in the exact same manner. And the ruling of the father in the virgin can fall if he is a Kāfir while she is a Muslimah, or he is a Muslim and she is a Kāfirah, or if he is insane. And the ruling of the master in his slave woman can also fall if he is a child or insane.

The second: the remaining awliyā' who are not considered. But if they refuse, the matter is taken from their hands and the ruler marries her off. So the husband's share in holding the bond of marriage is more complete than the share of these mentioned awliyā'.

So we find that the matter of the awliyā' are inconsistent, as you see. And then, it is only the contract for them only, afterwards they have nothing in their hands about the bond of marriage. Instead, it is with the husband: if he wills, he upholds it, and if he wills, he dissolves it by divorce.

And we find the authority of the husband firmly established, because the bond of every marriage is in his hand, and it is not valid except with his will in every circumstance, and it is not dissolved except by his will. So he is most deserving of this description without doubt.

Then the decisive evidence is the saying of Allah, Mighty and Majestic, “And no soul earns except against itself.” [al-An'ām: 164]

And the saying of the Messenger of Allah ﷺ, “Indeed, your blood, your property, and your honor are prohibited for you,”¹²⁴

¹²⁴ Ṣaḥīḥ al-Bukhārī 6043: Ṣaḥīḥ

So the pardoning of a walī about the wealth/property of the woman he is a walī of is earning against another, and that is false; and it is a ruling in another's wealth/property, and that is prohibited. So it is established that it is the husband, who acts in his own wealth as he wills, whether pardoning or taking his right. And by Allah, Exalted is He, is success.

Issue: Nikāḥ al-Shighār

Nikāḥ al-shighār is not permissible. Shighār is when two men exchange marriage of women they are a walī of on the condition that each gives the other in marriage, and this is whether they mention a mahr for each of the two women, or for one of them without the other, or if they do not mention a mahr at all, all of it is the same: it is annulled forever. There is no maintenance (nafaqah) in it, no inheritance, no mahr, and none of the rulings of marriage apply and there is no 'iddah. If he knew that it is prohibited, then the ḥadd punishment applies to him, and the child is not attributed to him. If he was ignorant, then there is no ḥadd upon him, and the child is attributed to him. And if she knew that it is prohibited, then the ḥadd is upon her; but if she was ignorant, then there is nothing upon her.

Abū Hurayrah narrated, "The Messenger of Allah ﷺ forbade shighār. And shighār is when a man says to another: Marry me your daughter and I will marry you my daughter; or marry me your sister and I will marry you my sister."¹²⁵

We have also narrated it with an authentic isnād from Jābir¹²⁶, and from Ibn 'Umar¹²⁷, and from Anas¹²⁸ all from the Prophet ﷺ. So this is a prohibition from the Messenger of Allah ﷺ.

¹²⁵ Ṣaḥīḥ Muslim 1416, 61: Ṣaḥīḥ

¹²⁶ Ṣaḥīḥ Muslim 1417: Ṣaḥīḥ

¹²⁷ Ṣaḥīḥ Muslim 1415: Ṣaḥīḥ

¹²⁸ Al-Muṣannaf 'Abd al-Razzāq 6690, 3/559: Ṣaḥīḥ

And the claim of al-Shāfi‘ī that the Messenger of Allah ﷺ only prohibited shighār because of the corruption of the mahr in both cases, it is a false claim because it attributes to the Messenger of Allah ﷺ what he never said, and this is impermissible.

If they mention what ibn ‘Umar narrated, “The Messenger of Allah ﷺ prohibited shighār. And shighār is when a man marries off his daughter on condition that the other marries him his daughter, without any mahr between them.”¹²⁹

And what Anas narrated, “The Messenger of Allah ﷺ said: ‘There is no shighār in Islam. And shighār is when a man exchanges his sister for another man’s sister, without mentioning any dowry.’”¹³⁰

This is not a ḥujjah that shighār is only prohibited because of the corruption of the mahr.

There is only in these two narrations the prohibition of shighār in which no mahr was mentioned at all, and there is no mention in it for shighār in which there is mahr, not by a prohibition and also not by a permissibility. Whoever claims that has claimed falsehood and attributed to the Messenger of Allah ﷺ what he never said.

So it is obligatory to seek the ruling of shighār in which a dowry is mentioned from other than these two narrations

So we find the narration of Abū Hurayrah and Jābir both of which came with general wording regarding shighār, clarifying that it is, “marriage in exchange for marriage,” and he ﷺ did not make it a condition that it is only with mahr or without mahr. So the narration of Abū Hurayrah is an addition to the narration of ibn ‘Umar from the Prophet ﷺ and the narration of Anas is a general addition which is not allowed to abandon.

And it has been authentically narrated from the Messenger of Allah ﷺ, “Every condition not in the Book of Allah is false.”¹³¹

¹²⁹ Muwaṭṭa’ Mālik 24, 2/535: Ṣaḥīḥ

¹³⁰ Al-Muṣannaf of ‘Abd al-Razzāq 10434, 6/184: Ṣaḥīḥ

¹³¹ Ṣaḥīḥ al-Bukhārī 2168: Ṣaḥīḥ

And we find that shighār, whether a dowry was mentioned in it or not has a condition that is not in the Book of Allah, Mighty and Majestic. So it is false in every case.

If one of them proposes to the other and marries, and then the other proposes and marries, that is permissible as long as it is not made a condition that one must marry the other that is the prohibited and invalid.

Issue: Marriage Upon a Condition

A marriage upon a condition is not valid at all, except for the mahr described as a liability, or paid, or specified, and that he does not harm her or her wealth. And keeping [her] in kindness, or releasing [her] with good treatment.

As for making gifts a condition, or a sale, or that he must not take a concubine, or that he must not move her from her place, or anything else that is not in the Qur‘ān and Sunnah: if that condition is made within the contract itself, then the contract and marriage is invalid. But those conditions are stipulated after the contract, then the contract is valid and all of the conditions are false, whether it was contracted with stipulation of emancipation, or divorce, or that the matter of divorce is in her hand, or that she has the option, all of that is false.

And likewise if the marriage occurs on the condition that one of them can decide the mahr, all of that is a corrupt contract. This is a corrupt condition, because it is unknown: she might judge for herself everything in the world, and he might judge for her nothing at all. Whatever is like this is a condition not found in the Book of Allah, Exalted and Majestic, so it is void, and the marriage upon it is void and annulled.

As for if they stipulated that after the marriage contract, then the contract is valid, and she has the dowry of her likes, unless they agree to more or less

Abū Hurayrah narrated, “The Prophet ﷺ, said: ‘It is not permissible for a woman to ask for the divorce of her sister in order to empty her plate. She will only have what has been decreed for her.’”¹³²

So whoever stipulates a condition that the Messenger of Allah ﷺ prohibited, that condition is false. And if a marriage is contracted upon it, then the marriage is void. And from that is stipulating that he must not move her.

Those who argue for obligating these conditions mention what ‘Uqbah ibn ‘Āmir al-Juhanī narrated from the Messenger of Allah ﷺ, “Indeed, the most deserving of conditions that you should fulfill are those by which you made the private parts lawful for yourselves.”¹³³

This is an authentic narration, and there is nothing they can cling unto in it because they do not disagree with us, and also no Muslim upon the face of the earth disagrees that if he stipulated for her to drink khamr, or to eat swine, or to abandon the prayer, or to abandon the fast of Ramaḍān, then all of that is false and not binding. So it is established by the necessity of the ‘aql that whoever claims, “What is only prohibited is making a condition that permits what is prohibited,” is false. And it has been established that the Messenger of Allah ﷺ never intended in this narration any condition that makes prohibited the permissible, and also not any condition that makes permissible what is prohibited and also not any condition that omits an obligation and also not any condition that makes obligatory what is not obligatory. Because all of that is opposition to the order of Allah and the orders of His Messenger ﷺ. So every single condition that is not in the Qur‘ān and Sunnah is an opposition to Allah and his Messenger and that is not only by permitting with a condition what is prohibited but also by prohibiting what is permitted and by omitting an obligation with that condition and also making obligatory what is not obligatory.

And the stipulation of the woman that the husband must not marry another, or that he must not take a concubine, or that he must not

¹³² Ṣaḥīḥ al-Bukhārī 5152: Ṣaḥīḥ

¹³³ Ṣaḥīḥ al-Bukhārī 5151: Ṣaḥīḥ

be absent from her, or that he must not move her from her house, all of that is the prohibiting what Allah has made permissible, and it is the same as declaring carrion or swine permissible, all of that is opposition to the ruling of Allah. So it is established that he ﷺ only intended what he allowed from conditions, by his words, the condition of the mahr that is permissible, which Allah the Exalted ordered us with, and the other matters from the Qur‘ān and Sunnah only. So making a condition that if he marries another or takes a concubine that she is then divorced, or emancipates her, or gives her the choice, or makes her own affair in her hands, then all of that is false or making a condition in general that none of that must occur.

And we will clarify if Allah wills that the husband giving the woman the choice, or if he gives her possession of her own affair about remaining in the marriage, then all of that is false, because Allah the Exalted never obliged any of that, and also not His Messenger ﷺ.

And it is established from him ﷺ that he said, “Whoever does an action that is not upon our order, it is rejected.”¹³⁴

So all of that is false. The woman has no choice in separating from her husband or remaining with him except where Allah the Exalted has placed it, and that is only in the case of the emancipated slave woman. Beyond that, a woman never owns her own affair at all. So all of their sayings falls away. And with Allah the Exalted is success.

And it is not permissible for a marriage to be contracted upon a mahr that is a male servant without describing it, or a female servant without describing it, or a house without describing it or specification. All of that invalidates the marriage if it is contracted upon it, because it is unknown and it is not known what it is. So the two did not agree upon a known mahr. Instead it is as if she says, “The value of all that is one thousand dīnār,” while he says: “It is instead ten dīnārs.”

¹³⁴ Ṣaḥīḥ Muslim 1718: Ṣaḥīḥ

But if they agreed upon that after the validity of the marriage, then the marriage is valid, while the mahr is false, and she must be judged with the mahr of women she is equal to, except if they both agree to something lesser or more. And all praise is due to Allah, Lord of the worlds.

Issue: Mut‘ah Marriage

Mut‘ah marriage is prohibited, it is a marriage for a specified time. There are many different narrations in which the prophet allowed mut‘ah and then prohibited it afterwards and then allowed it again. What is sufficient for all of this is that the latest time in which the Prophet ﷺ permitted mut‘ah is at Awṭās and then after that he prohibited it. And there has not come any permissibility from the Prophet ﷺ after that. Then many companions after the passing of the Messenger of permitted it, and none of that has any value, the ḥujjah is only in the ruling of the Prophet ﷺ, and not in anything other than that. And there is nothing in any of these narrations necessitating that it is an acknowledgement from the Prophet.

Salamah ibn ‘Amr narrated, “The Messenger of Allah ﷺ permitted Mut‘ah during the year of Awṭās for three days, then prohibited it.”¹³⁵

Issue: Which Women are Prohibited to Marry

It is not permissible to marry: the mother, the grandmother from the father’s side or the mother’s side, and what comes after them in lineage the daughter, the daughter of a daughter, the daughter of a son, and what comes after them in lineage, the sister in whatever form she may be, the daughter of a brother, the daughter of a sister, and what comes

¹³⁵ Ṣaḥīḥ Muslim, 1405, 18: Ṣaḥīḥ

after them in lineage, the paternal aunt (‘ammah), the maternal aunt (khālah), and what comes after them in lineage, the wife’s mother, her grandmother, and what comes after them, the mother of a female slave whom it is permissible for him to have intercourse with, and also not her grandmother, and those who come after them.

Allah the Exalted said, “Forbidden to you are your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, the daughters of your brother, and the daughters of your sister ... and the mothers of your wives.” [al-Nisā’: 23]

The grandmother, whether she is the mother of a father, or the mother of a grandfather, or the mother of a great-grandfather, or the mother of the mother of a grandfather, or the grandmother of a mother, or the mother of a mother, all of these are ‘mothers’. Allah said, “As He expelled your parents from Paradise.” [al-A‘rāf: 27].

And the sister can be from the same father and mother or can be paternal or maternal.

And the daughter of a daughter, the daughter of a son, the daughter of the son of a daughter, and the daughter of the daughter of a son, however it is, all of them are ‘daughters’.

Allah, Mighty and Majestic, said: “O children of Adam ...” [al-A‘rāf: 27]

And he ﷺ said regarding menstruation: “This is a matter Allah has decreed upon the daughters of Ādam.”¹³⁶

And the daughter of a brother’s daughter, and the daughter of a brother’s son, all of them are daughters of a brother.

And the daughter of a sister’s daughter, and the daughter of a sister’s son, all of these are daughters of a sister.

And the sister of a grandfather from the father’s side, and the sister of a great-grandfather from the father’s side, all of them are paternal aunts (‘ammahs).

¹³⁶ Ṣaḥīḥ al-Bukhārī 294: Ṣaḥīḥ

And the sister of a grandfather from the mother's side, and the sister of a grandmother from the father's or the mother's side , all of them are maternal aunts (khālahs).

And the wife, and the female slave with whom intercourse is permissible for a man, all of them are included among his 'wives'.

Issue: Everything That is Prohibited by Lineage is Prohibited by Suckling

Everything that is prohibited by lineage (nasab), and the prohibitions which we have mentioned, is also prohibited by suckling (raḍā'). Like the woman who nurses a man then she becomes his mother, and her mother is his grandmother, and her grandmothers on her father's and mother's side are all mothers for him. And all whom she nurses are his brothers and sisters. And those who descend from them are his nieces and nephews, the daughters of his brothers and the daughters of his sisters. And the paternal aunts of the one who nursed him, as well as her maternal aunts, are his aunts as we have mentioned. And the paternal aunts of his father through suckling are his paternal aunts and likewise in everything.

‘Ā’ishah narrated that the Messenger of Allah ﷺ, who said, “What is prohibited due to birth is prohibited due to suckling.”¹³⁷

Issue: Combining Two Sisters in Marriage

It is not permissible to combine two sisters in permitting intercourse, whether the sisters are through lineage or through suckling, as we have mentioned, both are not allowed, not by marriage and also not by slavery, and also not one of them through marriage with the other

¹³⁷ Al-Mujtaba 3300: Ṣaḥīḥ

through slavery. And it is also not permissible between an aunt and her brother's daughter, and also not between a maternal aunt and her sister's daughter, just as we said regarding the two sisters, in the same manner. So whoever has two women enslaved that are sisters, or an aunt and her brother's daughter, or a maternal aunt and her sister's daughter, then all of them are prohibited for him until he removes one of them from his ownership, by death, or by sale, or by gift, or by other means or until he marries one of them by any of these means. Then it becomes permissible for him to have intercourse with the one who remains. If the other returns to his ownership, she returns to being prohibited as she was, while the first remains permissible as she was. If he removes her from his ownership, or marries her off, or she dies, then the one who was prohibited becomes permissible for him. And likewise, if the wife dies, or he divorces her with a triple divorce, or before consummation, then marriage to the other becomes permissible for him. And likewise, if he divorces her with a revocable divorce and her waiting period ('iddah) is completed, then marriage to the other becomes permissible for him.

The decisive evidence for this is the saying of Allah, "...And [that you are prohibited] to combine between two sisters, except for what has already passed." [al-Nisā': 23].

The meaning of that is that Allah forgave them for what had already passed of that, because He, exalted is He, kept them upon it.

Some people said, "He can combine two sisters through slavery."

This is the saying of Abū Sulaymān and our companions.

Those who permit combining two, they give precedence to the verse of Allah, "Except for what your right hands possess," [al-Nisā': 24] over His saying "And that you (must not) combine between two sisters," [al-Nisā': 23], and by that specify enslavement from this prohibition as permissible. And they do the same with the verse, "And the mothers of your wives." [al-Nisā': 23]

They have no ḥujjah other than this. So we look into this and find for the two texts no other way but to give precedence to one of the two without one, by making an exception from it.

So it is then either like those whom we mentioned say, so its meaning becomes, “And that you (must not) combine between two sisters, and the mothers of your wives, except for what your right hands possess (then they are permissible).”

Or it is as our saying, so its meaning is then, “Except what your right hands possess (they are permissible), except if they are two sisters, or the mother of a woman who became permissible to you, or an aunt and her brother’s daughter, or a maternal aunt and her sister’s daughter.”

So as it must be one of these two exceptions, one of them is not better than the other except with decisive necessary evidence. As for mere claims, then no.

So we look: Do those who precede the exceptions of enslavement as permissible from the prohibition for the prohibition of combining two sisters, a mother and her daughter, an aunt and her brother’s daughter, or a maternal aunt and her sister’s daughter have any decisive evidence or not? And nothing for them is found at all.

Except that some of them said, “We know that Allah, exalted is He, never prohibited combining two sisters in intercourse because it is impossible that Allah would address the impossible. So it is established that Allah, exalted is He, only prohibited us from a situation in which it is possible to combine them, and that situation is none other than marriage, because combining them through slavery is permissible and permissible without difference.”

We say: You are correct in that Allah prohibits the impossible combination between them in intercourse, but you are wrong in specifying this prohibition only for marriage, because that is a specification without any decisive evidence. Instead He prohibited combining them through marriage, through having intercourse (by enslavement) with whichever of them one wishes, and through taking

pleasure from both of them together and this is possible. So, bring evidence for specifying marriage and not what we mentioned. This is not found with those who claim this at all. So it is obligatory to bring decisive evidence for our exception otherwise they are both claims. So we find the saying of Allah, exalted is He, “Except for what your right hands possess,” [al-Nisā’: 24] there is no disagreement among any of the Ummah that it is not upon its generality (‘umūm). Instead, all of them agree that it is specific (makhṣūṣ), because there is no difference or doubt that a boy from the slavery of the right hand is prohibited and not permissible. And that the mother through breastfeeding, from slavery, and the sister through breastfeeding, from the ownership of the right hand, both are agreed on their prohibition. Or the case where a man owns a female slave whom his father has married and had intercourse with, and she bears a child to him: it is prohibited for the son. These are the most specific prohibitions.

Then we looked at Allah’s statement, “And that you do not combine between two sisters.” [al-Nisā’: 23]

And the saying of Allāh, “And the mothers of your wives, and your stepdaughters who are in your care from among your wives whom you have entered into.” [al-Nisā’: 23]

And the saying of Allah, “And do not have nikāḥ with the mushrikāt until they believe.” [al-Baqarah: 221]

And there has not come any text that this is specified, except the marriage to kitābiyyāt only. So it is not allowed to make specification of a text without decisive evidence for its specification. So as there must be a specification of what is of this description or a specification of another text on which there is no difference that it is specific, then specification of the specific, that is that for which nothing else is allowed. And their camels are what their right hand possesses.

Abū Hurayrah narrated that the Prophet ﷺ said, “Do not combine a woman and her paternal aunt, or a woman and her maternal aunt.”¹³⁸

And Abū Hurayrah narrated, “The Messenger of Allah ﷺ prohibited that a woman be combined with her paternal aunt (‘ammah), and that a woman be combined with her maternal aunt (khālah).”¹³⁹

And Abū Hurayrah narrated, “The Messenger of Allah ﷺ prohibited four women that they be combined (in marriage): a woman and her paternal aunt (‘ammah), and a woman and her maternal aunt (khālah).”¹⁴⁰

Issue: Marrying the Wife of the Brother Who Died Leaving Her Behind

It is permissible for a man to marry the wife of his brother after his brother dies leaving her behind, or after his brother divorces her once her ‘iddah has ended, or immediately after his brother’s divorce of her if he had not touched. Likewise, it is permissible for the paternal uncle or maternal uncle to marry the wife of a nephew or niece if that nephew or niece died leaving her behind, or divorced her after the completion of the ‘iddah, or after a divorce where there had been no consummation. And likewise, it is permissible for the son of one’s brother or the son of one’s sister to marry the wife of the paternal uncle or maternal uncle after their death, or after their divorce once the ‘iddah has ended, or after a divorce in which there had been no touching. There is no text prohibiting this, and everything for which no prohibition is ḥalāl. Allah ﷻ said, “And permissible to you are all beyond those (mentioned).” [al-Nisā’: 24] And this is mentioned after Allah ﷻ mentioned those women prohibited to us in marriage. And by Allah ﷻ is success.

¹³⁸ Ṣaḥīḥ al-Bukhārī 5109: Ṣaḥīḥ

¹³⁹ Ṣaḥīḥ Muslim 1408, 40: Ṣaḥīḥ

¹⁴⁰ Ṣaḥīḥ Muslim 1408, 34: Ṣaḥīḥ

Issue: It is Prohibited for the Son May to Marry the Wife of His Father

It is not permissible for the son to marry the wife of his father, and the one whom his father has intercourse with through slavery who is allowed for him. And it is not permissible for him to have intercourse with her. And also not to derive pleasure from her whether through marriage or slavery. He can have ownership of her, but she is not permissible for him at all. Likewise, it is not permissible for a man to marry a woman and to have intercourse with her through slavery, if she is of those whom it is permissible for his son to have intercourse with or to derive pleasure from through marriage or slavery. The grandfather in everything we have mentioned whether paternal or maternal, even high in lineage, is like the father, with no difference. And the son of a son and the son of a daughter, whether low in lineage or not, are like the son in everything we have mentioned, with no difference.

As for the one with whom a man has contracted marriage, there is no disagreement regarding her being permanently prohibited to his father and forefathers, and to his sons and their descendants forever.

As for the one permissible to a man through ownership of the right hand, if he consummated with her, we know of no disagreement regarding her being prohibited to his offspring and to all their descendants.

Allāh said, “And do not have nikāḥ with those [women] whom your fathers married.” [al-Nisā’: 22]

A slave woman who is ḥalāl to a man is a wife to him, whether he had intercourse with her or not, whether he looked at her or not. Allah ﷻ said, “And the ḥalā’il of your sons who are from your loins (are forbidden to you).” [al-Nisā’: 23]

And ḥalā’il is the plural of ḥalīlah, and ḥalīlah is the fa’ilah of ḥalāl. Every woman made permissible to a man is his ḥalīlah. And by Allah ﷻ is success.

Issue: A Man Marries a Woman Who Has a Daughter, or He Owns a Slave-Woman Who Has a Daughter

As for the one who marries a woman who has a daughter, or he owns a slave-woman who has a daughter: if the daughter is in his care (ḥijr), and he touches the mother along with that, whether he has intercourse with her or not, but he is alone with her in seclusion with enjoyment, then her daughter is prohibited to him forever. But if he touched the mother and the daughter is not in his care, or the daughter is in his care, but he did not touch the mother, then marrying the daughter is permissible for him.

As for the one who marries a woman who has a mother, or he owns a slave-girl who is permissible to him and she has a mother, then the mother is forbidden to him forever by that contract, whether he has intercourse with the daughter or not.

The decisive evidence for this is the saying of Allah ﷻ, “And [forbidden to you are] your stepdaughters (rabā’ib) who are under your guardianship (ḥijr), [born] of your wives whom you have entered upon. But if you have not entered upon them, then there is no sin upon you.” [al-Nisā’: 23]

So Allah did not prohibit the stepdaughter (rabībah) who is the daughter of the wife or of the slave-woman except if he enters upon her and that she is under his guardianship. So she is not prohibited except when both matters are combined. This is because Allah ﷻ, after mentioning those women who are prohibited, said, “And permissible to you are [all others] beyond these.” [al-Nisā’: 24]

And Allah said, “And your Lord is never forgetful.” [Maryam: 64]

And her being under his guardianship (ḥijr) divides into two categories: That she resides with him in his household, and he is her caretaker. And the second is that he oversees her affairs in the manner of guardianship, not with the meaning of agency (wakālah). So being under his guardianship (ḥijr) occurs in these two manners.

As for her mother, she becomes prohibited to him by the mere contract by the saying of Allah ﷻ, “And [prohibited to you are] the mothers of your wives.” [al-Nisā’: 23]

Allah made it general and it is not allowed to specify it.

Allah’s saying, “And your stepdaughters,” [al-Nisā’: 23] is conjoined (ma’ṭūf) to what He has prohibited, there is no doubt in this. And Allah’s saying, “Those who are in your care” [al-Nisā’: 23] is a description (na’t) of the stepdaughters (rabā’ib); there is no other possibility at all. And His statement, “From the women with whom you have entered upon,” [al-Nisā’: 23] is from the descriptive connection (ṣilah ṣifah) of the stepdaughters; it cannot at all be otherwise. Because if it would go back to His statement, “And the mothers of your wives,” [al-Nisā’: 23] then its place would have been, “The mothers of your wives from among the women whom you have entered upon.” And this is impossible in speech. So, it is established that the exception is in the stepdaughters only, and it is impossible that it goes back to the mothers of wives. And with Allah, exalted is He, is all success. So it is not permissible for the phrase “التي” to be taken as a description for “your wives” in Allah’s saying, “And the mothers of your wives.” [al-Nisā’: 23] The words, “Whom you have entered upon,” is an adjective (na’t) describing the women who are the mothers of the stepdaughters, and nothing else. If someone claims the verse “From among your wives whom you have entered upon,” as referring to the mothers of wives, the meaning would be, “And the mothers of your wives, from among your wives whom you have entered upon”, making the condition of entering upon apply to the mothers of wives, while it applies to the stepdaughters. When two separate texts are mentioned, one description (na’t) cannot apply to both. The naḥwiyyūn do not allow saying, “I passed by your wives and fled from Zayd’s wives, the elegant ones” intending the adjective “the elegant ones” to describe both groups of women.

Some claimed, “If he enters upon her mother, then the daughter is prohibited to him whether she is under his guardianship or not.”

The opponents who do not consider the condition that the stepdaughter must be under the care of her mother's husband along with him entering upon her mother, have argued with corrupt narrations.

Among them is a narration of 'Amr ibn Shu'ayb, from his father, that the Messenger of Allah ﷺ said: "Any man who marries a woman and consummates the marriage with her, it is not lawful for him to marry her daughter. But if he has not consummated the marriage with her, then let him marry her."¹⁴¹

This is weak because this narration is munqati' and Yaḥyā ibn Ayyūb is weak.

And a narration from Wahb ibn Munabbih, "It is written in the Torah: 'Whoever uncovers the nakedness of a woman and her daughter is accursed.'"¹⁴²

And this is very odd.

And a narration through Abū Bakr ibn 'Abd al-Raḥmān ibn Umm al-Ḥakam who said, "A man said: 'O Messenger of Allah, I committed fornication with a woman in the Jāhiliyyah, may I marry her daughter?' He ﷺ said: 'I do not see that permissible. It is not right for you to marry a woman whose daughter would look upon you as her mother does.'"¹⁴³

This is weak because this narration is munqati' in two places.

And through ibn Jurayj, that the Prophet ﷺ said regarding the man who marries a woman and only touches her without intercourse: "He must not marry her daughter."¹⁴⁴

This is weak it has even more inqitā'.

They also mention an authentic narration from Umm Ḥabībah that she said to the Messenger of Allah ﷺ: "I have heard that you are proposing to Durrah, the daughter of Abū Salamah?" He ﷺ said: "By

¹⁴¹ Al-Mudawwanah of Saḥnūn 2/194: Ḍa'īf

¹⁴² Al-Muṣannaf of 'Abd al-Razzāq 12745, 7/194

¹⁴³ Al-Muṣannaf of 'Abd al-Razzāq 12784, 7/202: Ḍa'īf

¹⁴⁴ Al-Mudawwanah of Saḥnūn 2/190: Ḍa'īf

Allah, were she not my stepdaughter she would not be permissible for me, she is the daughter of my brother through suckling.”¹⁴⁵

So they say, “And he did not mention her being in his care.”

We say: He also did not mention entering upon her mother. There is only in this narration that she is his stepdaughter and it is by the marriage contract alone that she becomes a stepdaughter. And they do not differ that this does not make her prohibited for him.

Then how when this narration is narrated like this Sufyan ibn ‘Uyaynah¹⁴⁶ and Hishām ibn ‘Urwah others. And others equal to or greater in reliability than Hishām narrated it with additional clarification, that Umm Ḥabībah said: “O Messenger of Allah, I have been told that you are proposing to the daughter of Abū Salamah?” He ﷺ said: “The daughter of Abū Salamah?” She said: “Yes.” He ﷺ said: “By Allah, were she not my stepdaughter in my care, she would not be permissible for me, for she is the daughter of my brother through suckling.”¹⁴⁷

This was narrated by Abū Usāmah, and Yaḥyā ibn Zakariyyā ibn Abī Zā’idah, and al-Layth ibn Sa’d, all from Hishām ibn ‘Urwah, affirming that he ﷺ mentioned her being in his care.

There is no doubt, and no disagreement, that this is all one incident, in one place, about the same story, where some narrators omitted a phrase which was preserved by others equal or superior to them in reliability. So it is prohibited to argue with the deficient version against what is in the Qur’ān.

And many have tumulted with absurdities by claiming that Allah meant by His saying, “Who are in your care,” [al-Nisā’: 23] it only in a descriptive manner, and not in a conditional manner.

This is nothing other than a mere lie against Allah ﷻ, and attributing falsehood to Him. Their statement is like saying regarding

¹⁴⁵ Sunan Abī Dāwud 2056: Ṣaḥīḥ

¹⁴⁶ Ṣaḥīḥ al-Bukhārī 5106: Ṣaḥīḥ

¹⁴⁷ Ṣaḥīḥ Muslim 1449, 15: Ṣaḥīḥ

His words, “Indeed, We have made permissible to you your wives to whom you have given their mahr,” [al-Aḥzāb: 50] that this is not prohibited for him to whom he did not give their mahr!

We say: If there had been no other text permitting the woman who gifts herself, or the one for whom no dowry has been stipulated, then none would be permissible for him except those to whom he gives their mahr. And you have no text in your hands prohibiting those stepdaughters not in his care.

They say, “Every prohibition that has two reasons, if one of them occurs on its own, it suffices.”

This is a pure lie, instead it has no effect except when both reasons are combined as has come in the texts.

Issue: Combining Between a Woman and her Father’s Wife, Her Son’s Wife, and Her Cousin’s Daughter

It is permissible for a man to combine between a woman and her father’s wife, and her son’s wife, and her cousin’s daughter in marriage, because no text has come prohibiting anything of that. And likewise, the wife of his mother’s husband is also permissible for him.

Issue: Marrying the Infertile

And likewise, it is permissible to marry: the eunuch, the infertile, and the barren woman, because no text has come prohibiting any of that and with Allah ﷻ is success.

Issue: A Prohibited Intercourse Does Not Prohibit a Permissible Marriage Except in One Case

A prohibited intercourse does not prohibit a permissible marriage except in one case: if a man fornicates with a woman, then it is never permissible for any of his descendants to marry her. But if the son fornicates with her and then she repents, this does not prohibit her from being married to his father or grandfather. And whoever fornicates with a woman, it is not prohibited for him if he repents to marry her mother or her daughter. In all of this, an invalid marriage knowing it is false and fornication are the same.

The decisive evidence for this is the saying of Allah ﷻ, “And do not marry those [women] whom your fathers married.” [al-Nisā’: 22].

The word nikāḥ in the language in which the Qur’ān was revealed applies to two meanings as clarified before, one is sexual intercourse (waṭ’), whether permissible or prohibited. And the other: the contract (‘aqd).

So, it is not permissible to specify the verse to one meaning by mere claim without a text from Allah ﷻ or from His Messenger ﷺ. So, whichever nikāḥ a man has with a woman whether she is free or a slave, whether it is permissible or prohibited she becomes prohibited for his children by the text of the Qur’ān.

And we have already clarified that the child of the child is still considered a ‘child,’ by the saying of Allah ﷻ, “O Children of Ādam.” [al-A‘rāf: 27]

And no text has come prohibiting a permissible marriage by prohibited intercourse. So claiming that is prohibited, because it is making rulings for which Allah ﷻ has given no permission.

If those that object to this mention what ibn Jurayj said, “I was informed from Ibn Bakr ibn ‘Abd al-Raḥmān ibn Umm al-Ḥakam that a man asked the Messenger of Allah ﷺ about a woman with whom he had fornicated in the Jāhiliyyah, saying: ‘May I now marry her daughter?’ He ﷺ replied: ‘I do not see that as permissible, and it is not

fitting for you to marry a woman whose daughter has seen from you what she herself had seen.”¹⁴⁸

This is weak because it is mursal.

And the other through Abū Hānī’, who said, “The Messenger of Allah ﷺ said: ‘Whoever looks at the private part of a woman, her mother and her daughter are forbidden for him.’”¹⁴⁹

This is also weak because it is mursal, and there is no ḥujjah in any mursal, especially since one of them has another inqita’ and Abū Bakr ibn ‘Abd al-Raḥmān ibn Umm al-Ḥakam is majhūl. And in the other is al-Ḥajjāj ibn Arṭāh who is weak, narrating from Abū Hānī’ who is also majhūl

They also deceive by saying, “Whoever has intercourse with his slave woman, or with his wife while she is menstruating, or when one of them is in a state of iḥrām, or is in i’tikāf, or in the daytime of Ramaḍān, or with his slave woman who is an idolater or a dhimmiyyah intentionally and knowingly then this is a prohibited intercourse. And there is no disagreement that such intercourse makes her mother and her daughter prohibited, and that it also makes her prohibited for his fathers and sons. So every prohibited intercourse should be the same.”

The answer: It is not as they claim. Instead in those cases he has intercourse through a ḥalāl woman (firāsh ḥalāl), and it is only prohibited because of a situation, which if it is removed, becomes permissible. And there is no disagreement that this does not invalidate the marriage, because he only had intercourse with his wife or a valid possession of the right hand (milk yamīn). So the difference between the two matters is clear. And with Allah ﷻ lies success.

¹⁴⁸ Al-Muṣannaf of ‘Abd al-Razzāq 12784, 7/202: Ḍa‘īf

¹⁴⁹ Al-Muṣannaf ibn Abī Shaybah 16490: Ḍa‘īf

Issue: The Son of an African Immoral Woman Marrying the Daughter of the Hāshimī Khalīfah.

All the people of Islam are brothers, and it is not prohibited for the son of an African woman of low status to marry the daughter of the Hāshimī Khalīfah. And it is also not prohibited to marry her off the sinner who has reached the utmost degree of sin if he is Muslim (as long as he is not a zānī) is suitable for a virtuous Muslim woman. And likewise, the virtuous Muslim man is suitable for a sinful Muslim woman, as long as she is not a fornicatress. What we prefer, however, is marriage among relatives to one another.

Those who oppose what we mentioned have nothing but extremely weak narrations which are also not from the Prophet ﷺ.

The ḥujjah is the saying of Allah ﷻ, “Indeed, the believers are but brothers.” [al-Ḥujurāt: 10]

And His saying, addressing all Muslims, “So marry those women who seem good to you.” [al-Nisā’: 3]

And Allah mentioned what He prohibited us of women, then said, “And permissible for you are all beyond that.” [al-Nisā’: 24]

And the Messenger of Allah ﷺ married Zaynab, Mother of the Believers, to Zayd his mawla.

And he married al-Miqdād to Ḍubā‘ah bint al-Zubayr ibn ‘Abd al-Muṭṭalib¹⁵⁰.

And we only prefer marriage among relatives because that was the actions of the Messenger of Allah ﷺ, he did not marry his daughters except to men of Banū Hāshim and Banū ‘Abd Shams.

And Allah said, “Indeed, in the Messenger of Allah you have an excellent example.” [al-Aḥzāb: 21] And with Allah is success.

As for what we said regarding the sinner and the sinful woman: Whoever opposes us is implied not to allow for a fāsiq man to marry anyone except a fāsiqah woman and to prohibit marriage for a fāsiqah

¹⁵⁰ Ṣaḥīḥ al-Bukhārī 5089: Ṣaḥīḥ

woman except a fāsiq man, and this is a saying that is from the wonders of the world without any decisive evidence.

Allah said, “Indeed, the believers are but brothers.” [al-Ḥujurāt: 10]

And He said, “The believing men and the believing women are allies of one another.” [al-Tawbah: 71]

And with Allah is success.

Issue: Marriage of a Sick Person Certain of Death, or Not Certain of Death

The marriage of a sick man who is certain of death, or not certain of it, whether he marries a sick woman as well or a healthy one, is permissible. He inherits from her, and she inherits from him, whether he dies from that illness or recovers and then dies later. Likewise, it is permissible for a sick woman, whether certain of death or not, to marry a healthy man or a sick man. In all cases, she is entitled to the named mahr just as with the healthy, and there is no difference.

Mālik said, “The marriage of the sick man is annulled, whether before consummation or after it.”¹⁵¹

This is false, Allah ﷻ and His Messenger ﷺ permitted marriage, and there is not in the Qur’ān and also not in the Sunnah any specification distinguishing the healthy from the sick, or the sick from the healthy. Allah said, “And your Lord is never forgetful.” [Maryam: 64]

There is no ḥujjah at all for them, not from Qur’ān, and also not from the Sunnah.

Except that some argued, “He has no right to bring into the heirs someone who will share with them in inheritance.”

¹⁵¹ Al-Mudawwanah 2/170

While this statement is false and free from decisive evidence. These same people say that if a man in his death-illness, certain of death, acknowledges a son from a slave-woman of his, while he all his life he had said he was his slave and he acknowledges him at the time of death as his son, then his acknowledgment is valid, and the son inherits his estate. So they permit him to bring into the inheritance someone who deprives the heirs entirely, but prohibit him from bringing in someone who would only reduce them slightly. This is the pinnacle of contradiction.

And they do not disagree that if a sick man, desperate of recovery and life, purchased a slave-girl and made the people witness himself that he only purchased her to seek a child from her, in order to with that diminish the inheritance of his heirs, then has intercourse with her and she becomes pregnant that this is permissible and allowed.

If they say, “She may become pregnant or may not.”

We say: Likewise, the woman whom he marries during his illness may die before him, and then he inherits from her, by that increasing the heirs’ share. And I wonder, do they prevent a sick Muslim from marrying a slave-girl or a dhimmiyyah who cannot inherit from him or not? And do they prevent the sick man who owns nothing from marrying? They are implied to abandon their corrupt principle or fall into contradiction.

Issue: A Woman Becomes Pregnant Through Fornication or Through a Corrupt, Annulled Marriage

If a woman becomes pregnant through fornication, or from a corrupt, annulled marriage, or from a valid marriage that was annulled due to an obligatory right, or if she was a slave and became pregnant from her master and then he freed her, or he died leaving her behind, then all of those mentioned are permitted to marry before giving birth to their child. But it is not permissible for the husband to have intercourse with

her until she gives birth. All of this is unlike the case of a divorced woman or a woman whose husband has died while she is pregnant, these two are not at all permitted to marry until they give birth. As for the freed slave who is pregnant and chooses her own self, her marriage is annulled, and it is not permissible for her to marry until she gives birth.

The decisive evidence for this is that the divorced pregnant woman or the woman whose husband has died while she is pregnant is in a state of waiting period (‘iddah) by the text of the Qur’ān, and Allah has prohibited the marriage of a woman in ‘iddah altogether until her ‘iddah is completed.

As for the remaining of those mentioned, no Qur’ān and also no Sunnah has obliged a waiting period (‘iddah) upon them, except upon the freed slave who chooses herself.

And if a woman is not in ‘iddah and also not married, then she is permitted to marry except if a text prevents it. And there is no text here preventing marriage.

But it is not permissible by the texts to have intercourse with a pregnant woman, except if the pregnancy is from him, the husband .

The opponents objected by mentioning the verse said, “And those who are pregnant, their term is until they give birth.” [al-Ṭalāq: 4]

And with the narration from Sa‘īd ibn al-Musayyib that a man named Naḍrah ibn Aktham married a woman, and when he went to her he found her pregnant. This was raised to the Prophet ﷺ, and the Messenger of Allah ﷺ ruled that her mahr belonged to her husband, that what was in her womb was a slave belonging to him, that she should be flogged with one hundred lashes, and that the two of them must separate¹⁵².

Nothing is more astonishing than the one arguing using this but is the first one to oppose everything that is in it. As for us, had the

¹⁵² Sunan Abī Dāwud 2131: Ḍa‘īf

narration been connected, we would have accepted it. But it is munqati‘ as ibn Jurayj did not hear this from Ṣafwān ibn Sulaym¹⁵³.

As for the saying of Allah, “And those who are pregnant, their term is until they give birth.” [al-Ṭalāq: 4]

It only came about the divorced women, because Allah said, “As for those of your women who have despaired of menstruation—if you doubt, their waiting period is three months, and also for those who have not menstruated. And those who are pregnant, their term is until they give birth.” [al-Ṭalāq: 4]

This is connected back to the beginning of the sūrah, which is about divorced women, and what comes after it is also carried upon this, from His saying, “House them [the divorced women] where you dwell, according to your means...” [al-Ṭalāq: 6] and all the other verses. And it was only made obligatory for the woman whose husband dies by the narration of Subay‘ah al-Aslamiyyah¹⁵⁴.

Likewise, the slave woman who becomes pregnant from her master, and then he dies leaving her, or he frees her, or she becomes pregnant from fornication, there is no ‘iddah upon her. And it has been established that a woman who has no husband, is not in a waiting period, and is not an ‘umm walad’ (mother of a child of her master), her marriage is permissible. And with Allah is all success.

Issue: When a Man Has Four Wives and Divorces One Of Them With a Triple Divorce

If a man has four wives and he divorces one of them with a triple divorce whether she is pregnant from him or not pregnant, and whether he had intercourse with her while she was still under his bond, or her marriage was annulled (faskh) from him, then it is permissible for him,

¹⁵³ Al-Muṣannaf of ‘Abd al-Razzāq 10705

¹⁵⁴ Ṣaḥīḥ al-Bukhārī 4909, 5319: Ṣaḥīḥ

immediately after divorcing her, to marry a fourth woman, or her sister, or her paternal aunt, or her maternal aunt, or his brother's daughter, or his sister's daughter, and to consummate the marriage with her.

As for in the case of a revocable divorce (*ṭalāq raj'ī*), it is not permissible for him to do that as long as she remains in her waiting period (*'iddah*).

There is no *ḥujjah* known for who prohibits this, except that they tumult with the saying of Allah, "And [prohibited to you is] that you combine two sisters [in marriage]." [*al-Nisā'*: 23]

They said, "And this (marrying her sister while she is in *'iddah*) is combining between them, since both of their pregnancies would be attributed to him, and both of them would require maintenance and housing from him."

And they say, "It is not permissible that his fluid (semen) gathers in five women, and also not in two sisters."

There is no other tumult known for them.

As for their saying that both women are then joined in his obligation of maintenance and housing then we do not help them in that. Because even if that is the case, it does not matter in the least, because Allah did not prohibit combining them in any matter except in permitting intercourse with both only.

And there is no difference between them both being joined in attributing pregnancy to him, or their being joined in attributing their children to him.

As for his semen being joined in five women, or eight women, or in two sisters, there is no text from *Qur'ān* or *Sunnah* that prohibits this. Allah only prohibited marrying more than four women, and prohibited combining two sisters in marriage contract or in making intercourse permissible only.

And Allah has detailed for us what He has prohibited of women, and then He said, "And permissible to you are all beyond these, provided that you seek [them in marriage] with your wealth." [*al-Nisā'*: 24]

Issue: It is Not Permissible for Anyone to Marry His Female Slave Before Freeing Her

It is not permissible for anyone to marry his female slave before he frees her, and it is not permissible for a woman to marry her male slave before she frees him. But if she frees him, marital relations are permitted between them, if they are pleased with it, just like with a free person. There is no difference in this ruling, and there is no disagreement, because Allah the Exalted said, “Except with their wives or those whom their right hands possess.” [Al-Mu‘minūn: 6] So, Allah made a difference between these two categories, and it is not permissible to combine the two categories that Allah made a difference in.

Issue: It is Permissible for a Man to Marry a Slave of His Father Who is Not Permissible for the Father

It is permissible for a man to marry a slave belonging to his father who is not permissible for his father, and a slave belonging to his son who is not permissible for his son, and a slave belonging to his mother, and a slave belonging to his daughter. It is also permissible for a slave to marry the mother of his master, the daughter of his master, or the sister of his master, if all of this is with the permission of his master. There is no ḥujjah at all for whoever prevents this.

The decisive evidence for that is the saying of Allah, “And marry those among you who are single and the righteous among your male and female slaves.” [An-Nūr: 32]

And he did not make an exception of anyone we mentioned.

Allah also says, “Your Lord was never forgetful.” [Maryam: 64].

We seek refuge in Allah from the belief of anyone who thinks that he can with his ‘aql correct or legislate something that Allah has not legislated.

Issue: Looking at the Woman a Man Wants to Marry

Whoever wishes to marry a free woman or a slave woman is permitted to look at her, whether she is unaware of it or aware to see what is apparent and hidden in her. He is only allowed to look at her face, but he can instruct a woman to look at his entire body and inform him about it.

The decisive evidence for this is the saying of Allah, “Tell the believing men to lower their gaze and guard their private parts.” [An-Nūr: 30]

Allah obliged lowering the gaze in general, just as He obliged guarding the private parts. This ruling is general and it is not allowed to specify it except by a text. And the text has specified that looking is permitted for one intending marriage only.

As for the narration attributed to the Prophet ﷺ that he said, “If any you ask a woman to marry, if he is able to look at what incites him toward her marriage, let him do that.”¹⁵⁵

This is weak because it has only come from Muḥammad ibn Ishāq and he is weak, and other ṭuruq with very apparent weakness.

As for what Muṣā ibn ‘Abdullāh narrated from Abū Ḥumayd or Ḥumaydah, “The Messenger of Allah ﷺ said: ‘If any of you proposes to a woman, there is no sin upon him to look at her, if he does that only when asking her to marry, even if she does not know.’”¹⁵⁶

This is weak because as you can see, he doubted between Abū Ḥumayd and someone majhūl and there are other ṭuruq of this narration

¹⁵⁵ Sunan Abī Dāwud 2082: Ḍa‘īf

¹⁵⁶ Musnad Aḥmad 23602, 23603: Ḍa‘īf

which are weak as they are from Aḥmad and ibn Abī Dāwud and they are both majhūlān.

What is only authentic in this chapter is what Sahl ibn Sa'd al-Sā'idī narrated, "A woman came to the Messenger of Allah ﷺ and said: 'O Messenger of Allah, I have come to offer myself to you.' The Messenger of Allah ﷺ looked at her, raising his glance toward her and lowering it, then the Messenger of Allah ﷺ bowed his head."¹⁵⁷

And what Bakr ibn 'Abdillāh al-Muzanī narrated, "Al-Mughīrah ibn Shu'bah proposed to a woman, so the Prophet ﷺ said: 'Look at her, for indeed that is more likely to bring about affection between the two of you.'"¹⁵⁸

And what Abū Hurayrah narrated, "I was with the Prophet ﷺ when a man came to him and informed him that he had married a woman from the Anṣār. The Messenger of Allah ﷺ said to him: 'Did you look at her?' He replied: 'No.' He ﷺ said: 'Then go and look at her, for indeed there is something in the eyes of the Anṣār.'"¹⁵⁹

Some people claim, "Looking at everything of the women is allowed because the original order is to lower the gaze from looking at women, then we find this order to look at her which is more specific, so we know that the obligation of lowering the gaze does not apply for the one that wants to marry."

This specification is false, we will now clarify this with a clear clarification by the will of Allāh, so we say: we observe and know by necessity that the ruling of looking and showing/covering are two different rulings that do not imply something in the other. There is one ruling in which someone can show something which the other is not allowed to look at, then these are two different rulings, just as it is established that a woman can show her face which men are not allowed to look at. Beginning with the ruling of showing and covering, Allāh made two zīnah's for a woman as a ruling, the ṣāḥirah, what she can

¹⁵⁷ Ṣaḥīḥ al-Bukhārī 5087: Ṣaḥīḥ

¹⁵⁸ Sunan al-Tirmidhī 1087: Ṣaḥīḥ

¹⁵⁹ Ṣaḥīḥ Muslim 1424, 74: Ṣaḥīḥ

show to everyone, which is the face, which we know from additional certain evidences clarified in another chapter, and the *bāṭinah* which is what Allāh prohibited to be seen from her and prohibited her to show, this is everything else of a woman, other than the face. She is not allowed to show this except for those specified as permissible, for women with women its known by necessity and as for women showing it to men it is in the verse which was revealed after the sixth hijrī year, “And tell the believing women to... And not expose their *zīnah* except that which apparent (the *zāhirah* as mentioned before)... And not expose their *zīnah* except to their husbands, their fathers, their husbands’ fathers, their sons, their husbands’ sons, their brothers, their brothers’ sons, their sisters’ sons...” [24:31] This is the first ruling associated with the situation of the issue in this topic.

The second ruling is that men are additionally ordered not to look at women in general, as Allāh ordered lowering the gaze for men in general as in *Sūrah al-Nūr*: 30. Then there is the mere exception in the text of merely looking at a woman who a man wants to marry.

All of these rulings must be combined, so the Prophet ﷺ only ordered, “Look at her.” A man that wants to marry only looks then at the *zāhirah* (face) which she is allowed to show to everyone and nothing more than that and allowing looking at the *bāṭinah* in such a case is transgressing the limits set by Allāh, this is an additional ruling above the ruling of looking at the *zāhirah*, this requires additional evidences from the words of the Prophet ﷺ for its permissibility, which is not authentically narrated on the topic, and Allāh did not include the man that wants to marry a woman among the men who are allowed to look at the *bāṭinah*. As for the face we clarified in another chapter the permissibility of a woman showing it.

And a woman can look at the man that will marry her because of it being a necessity, and all praise is for Allāh.

Issue: It is Not Permissible for Anyone to Look at an Ajnabiyyah Woman

It is not permissible for anyone to look at an ajnabiyyah woman if he does not intend to marry her, except in case of necessity. So if he looks in cases of zinā at the private parts in order to testify to that, then it is permitted for him, because he is ordered to give testimony. Allah the Exalted said, “Stand firmly for justice, witnesses for Allah.” [al-Nisā’: 135] And they have no way of establishing testimony in zinā except by the valid looking at the two private parts and affirming that.

As for other than that, then the face and the two hands, as we mentioned earlier, when testifying against her, or for her, or from her.

And it is permitted for a maḥram to see the entire body of his female relative, such as the mother, grandmother, daughter, granddaughter, maternal aunt, paternal aunt, niece from the brother, niece from the sister, the father’s wife, and the son’s wife, except for the anus and the private part only, everything else is permissible for him to see.

And likewise women with each other, they can see everything except the vagina and anus only.

And likewise men with each other, they can see everything except the penis and anus only.

The decisive evidence of this is the saying of Allah the Exalted, “So they must not display their adornment except what appears thereof, and let them draw their veils over their bosoms, and they must not display their adornment except to their husbands, or their fathers, or the fathers of their husbands, or their sons, or the sons of their husbands, or their brothers, or the sons of their brothers, or the sons of their sisters, or their women, or what their right hands possess, or the male attendants having no physical desire, or children who are not aware of the private aspects of women. And let them not stamp their feet to reveal what they hide of their adornment.” [al-Nūr: 31]

So Allah the Exalted mentioned in this verse two types of adornment (zīnah): an outward adornment, which is permitted to be shown to everyone, and what she is permitted to show to everyone is what she is not obliged to cover which is the face, as we clarified. And there is an inward adornment, which Allah the Exalted prohibited for her to show except to those mentioned in the verse.

And we find that He the Exalted equated in this the husbands, the women, the children, and all those mentioned in the verse.

And we have clarified in Kitāb al-Ṣalāh that the woman in her entirety is 'awrah except the face. So the ruling of 'awrah applies the same to what we mentioned, except for that regarding which there is no disagreement: that it is not permissible for anyone other than the husband to look at the two private parts as Allāh obliged guarding the two private parts, then allowed it between the husband and wife and slave woman.

There is not found in the Qur'ān, and also not in the Sunnah, or in the 'aql, any difference between the hair, neck, arms, legs, chest, stomach, back, or thighs except that it is not permissible for anyone to deliberately look at anything of a woman not allowed to him: not the face, and also not anything else, except there is a matter that necessitates it without the intention of evil in the heart or by the eye.

Whoever claims that it is not allowed to look at a maḥram woman except at what is above the chest, it is a specification without any decisive evidence.

And this is not a place for opinion or preference, because even our opponents here, who disagree with us by their desires, do not differ that it is not permissible to look at the adornment of the hair of an old free black woman, and indeed looking at her may even cause discomfort to the eye and kill any arousal of desire.

Jābir ibn 'Abd Allāh narrated, "Umm 'Aṭiyyah, the Mother of the Believers, sought permission from the Messenger of Allah ﷺ

regarding cupping, and he permitted her. So the Messenger of Allah ﷺ ordered Abū Ṭaybah to perform cupping for her.”¹⁶⁰

As for the statement of the narrator in this narration, “I thought that he was her brother through suckling or a boy not yet pubescent.”

This is merely a conjecture from some of the narrators below Jābir. Then how when this a false conjecture, because Umm ‘Aṭiyyah was born in Makkah, and there she gave birth to most of her children. And Abū Ṭaybah was a servant of some of the Anṣār in Madīnah so it is impossible that he was her brother through suckling. And he was a slave upon whom kharāj was imposed, as Anas ibn Mālik narrated, “The Messenger of Allah ﷺ was cupped by Abū Ṭaybah, so he ordered for him a sā‘ of dates, and he ordered his masters to reduce the tax upon him.”¹⁶¹

And he could not have performed cupping for her except that he saw her neck and upper back, that which corresponds to the top of her shoulders.

Issue: A Man Looking at the Private Parts of His Wife

It is permissible for a man to look at the private parts of his wife or his female slave whom he is permitted to have intercourse with. And likewise it is permissible for the woman or slave to look at his private parts. There is no dislike (karāhah) in this at all.

The decisive evidence of this are the well-known narrations narrated from the ṭarīq of ‘Ā’isha¹⁶², Umm Salamah¹⁶³, and Maimūnah¹⁶⁴, the Mothers of the Believers, may Allah be pleased with

¹⁶⁰ Ṣaḥīḥ Muslim 2206: Ṣaḥīḥ

¹⁶¹ Ṣaḥīḥ al-Bukhārī 2102: Ṣaḥīḥ

¹⁶² Ṣaḥīḥ al-Bukhārī 250: Ṣaḥīḥ

¹⁶³ Ṣaḥīḥ al-Bukhārī 322: Ṣaḥīḥ

¹⁶⁴ Ṣaḥīḥ al-Bukhārī 281: Ṣaḥīḥ

them that they used to perform ghusl with the Messenger of Allah ﷺ from the same vessel during janābah.

In Maimūnah's narration there is clarification that the Prophet ﷺ did that without a loincloth (mī'zar), because there is in her narration, "He ﷺ placed his hand in the vessel, then poured it over his private parts and washed it with his left hand."

After this, the saying of no one else matters.

It is astonishing that some of the pretentious people among the ignorant permit the act of intercourse with the private part but prohibit looking at it.

It suffices from this the statement of Allah the Exalted, "And they who guard their private parts. Except from their wives or those whom their right hands possess, for then they are blameless." [al-Mu'minūn: 5-6]

So Allah the Exalted ordered the guarding of the private parts except with the wife or the female slave, and there is no blame in that. This ruling is general in seeing, touching, and intimacy.

What the opponent cling unto is nothing except a weak false narration from a majhūla woman from the Mothers of the Believers, "I never saw the private parts of the Messenger of Allah ﷺ." ¹⁶⁵

And as for the narration attributed to the Prophet ﷺ, "Indeed, Allah modest and concealing; He loves modesty and concealment. So when any of you does ghusl, let him conceal himself." ¹⁶⁶

This is weak because it is munqaṭi' 'Aṭā' did not hear from Ya'la ibn Umayyah. There is between them Ṣafwān ibn Ya'la ¹⁶⁷ who is majhūl. And that ṭarīq has not come except through Abū Bakr ibn 'Ayyāsh who is weak.

¹⁶⁵ Musnad Ishāq ibn Rāhūyah 1038: Ḍa'īf

¹⁶⁶ Sunan Abī Dāwud 4012: Ḍa'īf

¹⁶⁷ Sunan Abī Dāwud 4013: Ḍa'īf

Issue: It is Not Permissible for a Muslim to Ask a Woman to Marry (Khitbah) If She is Already Asked by Another Muslim

It is not permissible for a Muslim to ask a woman to marry if she is already asked by another Muslim to marry, Except if he is better for her in religion (dīn) and good companionship, in which case he can then ask her to marry her even if she is asked by another Muslim to marry who is inferior to him in religion and companionship. Or, except if the first one that asked her to marry permits him to propose, then it is permissible for him to ask. Or, except if the one that asked her to marry invalidates his request to marry, then others can ask her to marry. Or, except if the woman herself rejects the first one that asked her, then it is permissible for someone else to ask her; otherwise, it is not permissible.

‘Umar ibn al-Khaṭṭāb narrated, “The Messenger of Allāh ﷺ prohibited you from buying over another’s sale or asking a woman to marry over another man’s request for marriage until the previous one asking leaves it or permits it for him.”¹⁶⁸

So there is in this narration the prohibition of asking a woman to marry if that woman is asked until he leaves/annuls his request or permits him.

And as for when the woman rejects the first one asking her, it becomes obligatory to sever the request, because continuing it is harm to her and is oppressive in preventing someone else from asking her. Any marriage request that is a sin has no binding ruling on her.

As for when he is superior in religion and good companionship, then it is the well-known narration of Fāṭimah bint Qays, that the Messenger of Allāh ﷺ said to her: “Who has asked you to marry?” She said: “Mu‘āwiyah and another man from Quraysh.” The Messenger ﷺ said: “As for Mu‘āwiyah, he is a young man among Quraysh youth

¹⁶⁸ Ṣaḥīḥ al-Bukhārī 5142: Ṣaḥīḥ

with nothing; as for the other, he is a man of evil. Marry Usāmah.” She disliked him, so he repeated it three times until she married him¹⁶⁹.

It was also narrated from Fāṭimah bint Qays, who narration, “The Messenger ﷺ said: ‘When you become permissible, inform me.’ She said: ‘When I became permissible, I told him that Mu‘āwiyah ibn Abī Sufyān and Abū Jahm had proposed to me.’ The Messenger ﷺ said: ‘Abū Jahm never leaves his staff from his shoulder, and Mu‘āwiyah is poor; marry Usāmah ibn Zayd.’ So I disliked him, then he ﷺ said: ‘Marry Usāmah,’ so I married him, and Allāh made it good, and I liked it.”¹⁷⁰

So this is the Messenger of Allāh ﷺ advising her to choose the one with the better companionship for her, better than Abū Jahl, who used to strike women much and Usāmah is better than Mu‘āwiyah.

If it is said, “How do you know that this narration came before the prohibition of asking a woman to marry over someone else’s marriage request?”

We say: It has been authentically narrated from the Messenger of Allāh ﷺ, “The religion is only advice.”¹⁷¹

Sufyān heard from Suhayl before the ikhtilāf of Suhayl.

And this ruling remains until the Day of Judgment. Among the most sincere forms of advice is that a man that wants can ask a woman that is previously asked to marry while he is better in companionship and religion with her than the one that preceded him in asking her, so he asks her. As for when he refrains from asking her to marry because of that person requesting her marriage before him, then he has not sincerely advised the woman and has deceived her; this is not permissible.

It is known that Mu‘āwiyah was a young man of Banu ‘Abd Manāf, extremely handsome and gentle. And Usāmah, a mawla of Kalbī, was black like coal. So we by necessity know that there is no

¹⁶⁹ Al-Mujtaba 3244: Ṣaḥīḥ

¹⁷⁰ Ṣaḥīḥ Muslim 1480, 36: Ṣaḥīḥ

¹⁷¹ Musnad Aḥmad 16941, 28/140: Ṣaḥīḥ

superiority in him against him except in religion, which is the ultimate merit/superiority before Allāh and His Messenger ﷺ, and in sincere advice for all Muslims, without doubt.

Issue: Khiṭbah to a Woman in Her ‘Iddah

It is not permissible for anyone to make a khiṭbah (asking a woman to marry) to a woman who is in her ‘iddah because of divorce or death of her husband. If he marries her before the completion of her ‘iddah, the marriage is annulled by faskh forever whether he consummated it or touched her or not, whether he stayed with her for a long time or a short time, and there is no inheritance between them, she has no right to maintenance/spending from him, and there is no mahr for her. If one of them was aware of the ruling, then the ḥadd punishment for zinā applies to him, whether stoning or flogging, and the same applies if both were aware. The child is not attributed to the father, the child is not his at all if he was aware. If they were both ignorant, then there is nothing upon them. If one of them was ignorant, then there is no ḥadd upon the ignorant one; if it was he who was ignorant, then the child is attributed to him and it is his child. When the marriage is annulled by faskh and her ‘iddah is complete, then he can marry her like anyone else, except in the case where the man himself had divorced his wife then he can take her back as with raj‘ah during her ‘iddah from him, as long as it was not a third divorce (ṭalāq). And likewise if a man owns a female slave and has intercourse with her, and then she is emancipated (‘itq) and given the choice, and then she chooses to separate from him, and their marriage is annulled by faskh, then she has the ‘iddah by pregnancy, children or months, then he specifically, without anyone else, can make a khiṭbah to her during her ‘iddah; if she accepts him, he can marry her and have intercourse with her.

The decisive evidence for what we have said is the saying of Allah, “And do not resolve on the marriage contract until the decreed term has reached its end.” [al-Baqarah: 235]

And He said, “And there is no blame upon you for that to which you hint of *khitbah* (asking her to marry) to women, or for what you conceal within yourselves. Allah knows that you will remember them. But do not promise them secretly (what is known by two only), except that you speak a proper word.” [al-Baqarah: 235]

As for our saying that there is no inheritance, no maintenance/spending, no clothing, and no mahr in all cases, whether due to ignorance or knowledge it is because this is not a valid marriage. Allah has made marriage permissible, but has not made this contract permissible. As it is not a marriage, there is no inheritance, no clothing, and no maintenance/spending, except in a valid marriage.

As for attributing the child to a man ignorant of the invalidity of the marriage, that is because attributing the child is the default, and only the text has negated attributing the child if he is a fornicator and man does not occur in that ruling except if he is aware of it.

As for the obligation of the *ḥadd* upon the one who know, it is because Allah says, “And they who guard their private parts” [al-Mu‘minūn: 5]

And He said, “Except from their wives or those their right hands possess, for indeed, they are not to be blamed. But whoever seeks beyond that, then those are the transgressors” [al-Mu‘minūn: 6-7]

And she is not a wife and also not a slave, so he is a fornicator.

And the Messenger of Allah ﷺ said, “The child belongs to the bed, and for the fornicator is the stone.”

Bed (*firāsh*) in the language is the wife¹⁷². So, the Prophet ﷺ did not make except the bed (woman) or fornication (*‘ihr*). And upon the fornicator is the *ḥadd*. And there is no *ḥadd* upon the ignorant one who erred, because Allah says, “And there is no blame upon you for that in which you erred, but only for what your hearts intended.” [al-Aḥzāb: 5].

¹⁷² Tāj al-‘Arūs 17/305

And because He says, “That I may warn you thereby, and whomever it reaches.” [al-An‘ām: 19]

And it has not reached this person so there is nothing against him.

As for the freed slave woman who is given the choice, it is because the Messenger of Allah ﷺ said to her, “If only you would return to him,” and we will mention this in its chapter, if Allah, Mighty and Majestic, wills.

As for our saying that the man who marries during ‘iddah and has intercourse with her whether he was ignorant or aware and was lashed and was not married, and she was not lashed because of her ignorance or was not stoned because she was a virgin and was in her ‘iddah from the death of her husband, then he can marry her after she is done with her ‘iddah in which he married her in.

Allah said, “Prohibited to you [for marriage] are your mothers, your daughters... And permissible to you are beyond these.” [al-Nisā’ 4:23-24]

He did not mention to us that a woman married during ‘iddah and consummated in it is among those prohibited to marry after her ‘iddah is complete.

And as Allah did not mention her in this verse or in any other, and also not on the tongue of the Messenger of Allah ﷺ, and since Allah has made her permissible in the Qur’ān by His saying, “And permissible to you are beyond these, that you seek them with your wealth, in marriage, not fornication.” [al-Nisā’ 4:24]

Issue: It is Prohibited to Explicitly Ask a Woman to Marry in Her ‘Iddah

What is permissible to hint to her in a way that she understands from it that he desires to marry her, and what is prohibited is to be explicit in it.

The decisive evidence of this is the saying of Allah ﷻ, “And do not determine to undertake a marriage contract until the decreed period (their ‘iddah).” [al-Baqarah: 235]

This cannot happen except by being explicit, if it is not explicit then it does not fall under this.

And Allāh said, “And there is no blame upon you for that to which you [indirectly] allude concerning a proposal to women or for what you conceal within yourselves. Allah knows that you will have them in mind. But do not promise them secretly except that you speak a proper word.” [al-Baqarah: 235]

And Allah ﷻ permitted indirect allusion and prohibited secret promises

Among the indirect requests is the saying of the Messenger of Allah ﷺ, which we have mentioned previously, to Fāṭimah bint Qays, “When you become permissible (when your ‘iddah ends), inform me.”¹⁷³

¹⁷³ Ṣaḥīḥ Muslim 1480, 36: Ṣaḥīḥ

Issue: It is Not a Condition for the Walī, Woman and Man to Be Present at the Nikāḥ Contract

Space does not invalidate the validity of the Nikāḥ, it is not a condition whatsoever. And indeed, the Messenger of Allah ﷺ married Umm Ḥabībah, Mother of the Believers, while she was in the land of Abyssinia and he was in Madīnah¹⁷⁴, with their mutual consent.

Issue: It is Not Permissible for a Woman to Display Herself with Any Adornment When Going Out

It is prohibited for a woman to display herself with any tabarruj or any adornment, whether it is make-up or clothes when going out, or to show her adornment to any man in general except those that are allowed to see everything of her except the two private parts.

The decisive evidence for this is the saying of Allah the Exalted said, “And do not do tabarruj, the tabarruj of the former jāhiliyyah.” [al-Aḥzāb: 33]

There is no mufassar in the Qur‘ān and Sunnah for the mujmal tabarruj mentioned in the verse. So it is obligatory to take from its generality and a woman is then prohibited any tabarruj. And tabarruj in the language is that a woman shows her beauty to men.

If someone says, “The ruling of the verse is only for the wives of the Prophet ﷺ.”

We say: This is among the most corrupt sayings because if the Prophet ﷺ orders Fāṭimah, or ‘Ā’isha or ‘Umar, or Abū Hurairah, or anyone else by their name then there is no difference that it is an order for everyone. No order is ever specified except with another text or

¹⁷⁴ Sunan Abī Dāwud 2107: Ṣaḥīḥ

necessity. And the entire clarification of this has preceded in my book about Uṣūl¹⁷⁵.

And also the Prophet ﷺ ordered the women to go as *tafilāt*¹⁷⁶, and this means in the language that they are ordered to go out in a disliked state¹⁷⁷ this obliges her to not use anything that beautifies her in general.

Issue: It is an Obligation Upon a Man to Have Intercourse with His Wife

It is obligatory upon a man to have intercourse with his wife, and the least of what suffices the obligation is every time she purifies from menstruation, if he is able to do that, whether he or she want it or not. Otherwise he has disobeyed Allah the Exalted, and she disobeys Allah by refusing this obligatory intercourse.

The decisive evidence of this is the saying of Allah the Exalted, “So when they have purified themselves, then go in to them from where Allah has ordered you.” [al-Baqarah: 222]

And whoever refuses this is compelled by discipline, because he has committed a *munkar* of action.

And Abū Juḥayfah narrated, “Salmān al-Fārisī said to Abū al-Dardā’: ‘Indeed, your body has a right upon you, and your family has a right upon you, so give each one who has a right his due: fast and break fast, pray and sleep, and go to your family.’ Then Abū al-Dardā’ informed the Messenger of Allah ﷺ of that, and the Messenger of Allah ﷺ said to him like the saying of Salmān.”¹⁷⁸

¹⁷⁵ The Decisive Truth Regarding the Principles of Fiqh 1/441

¹⁷⁶ Musnad Ahmad 6319, 10/399-400: Ṣaḥīḥ

¹⁷⁷ Maqāyīs al-Lughah 1/349

¹⁷⁸ Musnad al-Bazzār 4223, 10/152: Ṣaḥīḥ

Issue: The Wife is Not Allowed to Refuse Intercourse

It is obligatory upon both the slave woman and the free woman not to refuse their master or husband intercourse when he calls them, unless the one called is menstruating, or is sick and would be harmed by intercourse, or is fasting an obligatory fast. If she refuses without excuse, she is cursed.

The decisive evidence of this is what Abū Hurayrah narrated, “The Messenger of Allah ﷺ said: ‘By the One in Whose Hand is my soul, there is no man who calls his wife to his bed and she refuses him, except that the One Who is in the heaven is angry with her until he (the husband) is pleased with her.’”¹⁷⁹

And Abū Hurayrah narrated, “The Prophet ﷺ, who said: ‘If a woman spends the night shunning her husband, or shunning her husband’s bed, the angels curse her until she returns.’”¹⁸⁰

And bed is a kināyah for intercourse.

And even if that would not be the case then if she does not let him have intercourse with her till she moves away from the bed then she is cursed.

Then how when Ṭalq ibn ‘Alī narrated, “I heard the Messenger of Allah ﷺ say: ‘If a man calls his wife for his need, then let her do (ata) it (for) him, even if she is at the oven.’”¹⁸¹

And intercourse is among his needs, and it is specifically intercourse because a woman is not obliged everything a man is in need of, and it is a clarification of the previous narration.

And ‘Ata’ (coming/approaching) means doing and also means intercourse.

Allah said, “Do you (ata) commit immorality?” [27:54]

¹⁷⁹ Ṣaḥīḥ Muslim 1436: Ṣaḥīḥ

¹⁸⁰ Ṣaḥīḥ al-Bukhārī 5194: Ṣaḥīḥ

¹⁸¹ Sunan al-Tirmidhī 1160: Ṣaḥīḥ

And Allah said, “Then come (ata) to them from where Allah ordered you.” [2:222]

So it is established that a woman in any situation is ordered to have intercourse with the husband when he calls his wife for it. Whether she likes it or not.

And among the gravest sayings uttered is the saying, “If she does not want it, he is obliged not to have intercourse with her.”

Merely mentioning this corrupt saying is enough for its falsehood, because someone not wanting to fulfill an obligation does not omit an obligation, this is nothing but a mere opposition to Allah and his Messenger.

If it harms her body or she is sick then it is ḥaraj for her and is then not cursed and he is obliged not to harm her.

Allah said, “And live with them honorably.” [4:19]

And Allah said, “He has not laid upon you in religion any hardship.” [22:76]

Issue: Justice Between the Wives

Justice between wives is obligatory, and most of that is about the division of nights. It is not permissible for him to favor in the division of nights a free woman over a slave woman who is married to him, and also not a Muslim woman over a dhimmiyyah. If she disobeys him, it becomes permissible for him to abandon her until she obeys him, and to hit her in a manner that does not cause pain, injury, fracture, or festering. But if he hits her without her sinning, then qīṣāṣ is applied against him. It is not permissible for him to spend the night with his slave woman, and also not with his umm walad, and also not in the house of someone else except with an excuse.

The decisive evidence for this: The saying of Allah ﷻ, “So marry those women of your choice, two, three, or four. But if you fear that you will not be just, then [marry only] one, or those whom your right hands possess.” [al-Nisā’: 3]

And the saying of Allah ﷻ, “You will never be able to do perfect justice between wives, even if you desire it. So do not incline completely [toward one] such that you leave the other hanging, as if suspended.” [al-Nisā’: 129].

And His saying ﷻ, “As for those women from whom you fear sin, admonish them, forsake them in their beds, and strike them [lightly]. But if they obey you, then do not seek any means against them.” [al-Nisā’: 34].

So Allah ﷻ did not permit abandoning her in the bed except if he fears her sin. And He only permitted hitting, and not permit injuring, breaking bones, and also not causing the flesh to rot or killing her.

And He ﷻ said, “So for all sacred matters, there is qīṣāṣ.” [al-Baqarah: 194]

So it is established that if he transgresses against her without right that then qīṣāṣ is obligatory against him.

And Abū Hurayrah narrated that the Prophet ﷺ, “Whoever has two wives and inclines toward one of them over the other, he will come on the Day of Resurrection with one of his sides leaning.”¹⁸²

He ﷺ did not specify between a married free woman and a married slave woman, and also not between a Muslim woman and a dhimmīyah. And Allah ﷻ ordered the one who fears he cannot be just to restrict himself to one wife, or to restrict himself to what his right hand possesses. So it is established that he is not obligated to be just between his slave women.

As for those who argued that the free woman has two nights and the slave woman one night, they mention a mursal ḥadīth¹⁸³ and no mursal is ever a ḥujjah. And we have shown the established Sunnahs such as wiping over the turban, and the prohibitions related to certain sucklings, on the grounds that these are additions beyond what is in the Qur’ān. Yet here they abandoned the general command of Allah ﷻ for justice between women in general, due to a weak mursal narration, in

¹⁸² Sunan al-Tirmidhī 1141: Ṣaḥīḥ

¹⁸³ Sunan Sa‘īd ibn Manṣūr 743: Ḍa‘īf

contradiction to the generality of the Qur'ān. And there is no proof in anyone besides the Messenger of Allah ﷺ.

The Rulings of Al-Īlā'

Issue: Taking an Oath Not to Have Intercourse

Whoever takes an oath by Allah, or by one of His Names, that he will not have intercourse with his wife, or that he will cause her harm, or that he will not share with her a bed or a house, whether he said that in anger or in contentment, for the benefit of her child or for another reason, whether he made an exception in his oath or not, whether he specified a time from any time to the rest of his life or not, the ruling in all of this is the same. And that is that the ruler orders him to have intercourse with her, and set for him a time of four months starting from the time of his oath, whether the wife requests it or not, whether she consents or not. If he returns (changes his idea) within the four months, then there is no action against him. But if he refuses, nothing is enforced upon him until the four months expire. When the period is complete, the ruler compels him with the whip to either have intercourse or divorce, until he does one of the two, as Allah ordered, or he dies slain by the truth, to the displeasure of Allah, Exalted is He. Except if he is incapable of intercourse and utterly unable, then he is not to be burdened with what he cannot do. But he is obliged to return (change his idea in the period) by his tongue and to maintain good companionship and stay the night with her or else divorce. One of the two must occur. The ruler himself is not allowed to divorce on his behalf. If he does, that divorce does not bind him. And whether he made

an exception in his oath or not, the ruling is the same. Whoever took such an oath about an ajnabiyyah woman, and then later married her, the ruling of *ilā'* does not apply to him. However, he is compelled to have intercourse with her as we mentioned previously. And whoever took an oath in that with divorce, or freeing the slave, or by charity, or by walking, or by anything else, then he has not performed *ilā'*, but must be disciplined, because he took an oath by something it is not permissible to take an oath by.

The decisive evidence of this is the saying of Allah, Mighty and Majestic, “For those who swear abstinence from their wives is a waiting of four months. Then if they return, indeed Allah is Forgiving, Merciful and if they resolve on divorce, then indeed Allah is Hearing, Knowing.” [al-Baqarah: 226–227].

This verse necessitates everything we have said, because *al-aliyyah* is an oath. And it has been authentically narrated from the Messenger of Allah ﷺ, “Whoever takes an oath, let him not take an oath except by Allah.”¹⁸⁴

So it is established that whoever takes an oath by other than Allah, then he has not taken oath by what Allah ordered him to take an oath by, so he has not taken an oath and has disobeyed Allah. And the Messenger of Allah ﷺ said, “Whoever does an act that is not upon our order, it is rejected.”¹⁸⁵

Allah, did not make a difference in the ruling mentioned between the one that specifies a time and one who did not, and also not between the one who made an exception in his oath and the one who did not, and also not between the one whose wife requested it and the one who did not. It is Allah’s right over His servant, not hers.

The Messenger of Allah ﷺ said, “Whoever among you sees an evil, let him change it with his hand.”¹⁸⁶

¹⁸⁴ Ṣaḥīḥ al-Bukhārī 3836: Ṣaḥīḥ

¹⁸⁵ Ṣaḥīḥ Muslim 1718, 17: Ṣaḥīḥ

¹⁸⁶ Ṣaḥīḥ Muslim 49, 78: Ṣaḥīḥ

And the one who refuses to return or to divorce after four months is evident in committing evil, so it becomes obligatory to change it with the hand as long as he is openly displaying the evil. But no opposition must be raised against him before the completion of the four months, because that is the explicit wording of the verse.

And it has been authentically narrated that the Messenger of Allah ﷺ performed *ilā'* from his wives for a month, and he abandoned them all for a month, then returned to them.”¹⁸⁷

So whoever does the same has no blame if he returns before the expiration of the four months.

And the one who is incapable of intercourse, if he does *ilā'* against his wife, he is then someone that has done *ilā'*, because Allah did not specify intercourse from the other acts. It is then obligatory to task him with returning by what he is capable of: and that is by his speech, by returning to her bed, and by good companionship.

Allah, Exalted is He, said, “Every soul earns only against itself, and no bearer of burdens shall bear the burden of another.” [al-An‘ām: 164]

And He, Mighty and Majestic, said, “But if they resolve on divorce, then indeed Allah is Hearing, Knowing.” [al-Baqarah: 227]

So Allah has prohibited everything except for one’s determination to divorce. So it is then established that the divorce of the ruler imposed upon someone is excess, false, and a transgression of the limits of Allah. And it is invalid for anyone else to divorce on his behalf, or for anyone else to act on his behalf.

And Allah only made the ruling mentioned obligatory upon his wives or slaves only, not upon someone who is not his wife or slave. And if it was done the moment a woman was not his wife, then as the ruling did not oblige the moment it was supposed to oblige something, it does not after that oblige after that anything except with a text. And with Allah, the Exalted, is success.

¹⁸⁷ Ṣaḥīḥ al-Bukhārī: 2469

If he divorces her and then reconciles with her (with raj‘ah), the ruling of *ilā’* falls from him, because he has done what Allah, the Exalted, ordered. And whoever does what Allah, the Exalted, commands has done well. Allah, the Exalted, said, “No ground (of complaint) can there be against those who do good.” [at-Tawbah: 91].

Allah only mentioned *ilā’* from his women, then He ruled with stopping and waiting four months, then He ruled after those four months with either returning or divorce.

Mālik said, “He has the right to take her back (with raj‘ah); if he has intercourse with her, the ruling of *ilā’* falls from him. But if he does not have intercourse with her, she becomes separated from him at the completion of her ‘iddah, through the divorce pronounced by the judge.”¹⁸⁸

This is a statement, for which it is not known how one can utter such. Because there is nothing more false than affirming that a woman can be in a valid marriage to her husband, while she is also in an ‘iddah from a divorce that someone else has issued on his behalf. We do not know in which religion of Allah this is found.

The claim that divorce is done on behalf of someone else is mere falsehood, not from the Qur‘ān and Sunnah.

Allah said, “But if they resolve on divorce, then indeed Allah is Hearing, Knowing.” [al-Baqarah: 227]

So He made the resolve for divorce belong to the husband who made *ilā’*, not to anyone else.

And Allah, Exalted is He, said, “Every soul earns only against itself, and no bearer of burdens shall bear the burden of another.” [al-An‘ām: 164]

So it is false that anyone can divorce on behalf of another, not a judge and also not anyone else.

As for the Sunan: it has come in known cases with annulment (*fask*) of marriage; but as for divorce being carried out by someone else

¹⁸⁸ Al-Mudawwanah 2/349

on behalf of another, there is no trace of it whatsoever. From the texts there is nothing other than that he must return (to intercourse), or that he must divorce. So the obligation is only that he must be compelled to do one of the two, and there is no escape from that.

As for qiyās: It is not known from where they allow that the judge can divorce on behalf of the one who made *īlā'*, while they do not allow that he can return on his behalf and there is no difference between the two matters.

If they say, "It is not permissible for the judge to allow the private part of a woman of another, that would be *zinā*."

We say: And it is also not permissible for him to make the private part of a woman of another permissible to someone other than her husband by divorcing her on his behalf, that is also permitting *zinā* without any difference.

If they say, "What difference is there between annulling his marriage and divorcing on his behalf?"

We say: There is no difference. And we have never permitted that the judge can annul the marriage of any woman in the world from her husband. May Allah protect us from that! What we only say is that: every marriage which Allah, the Exalted, has obliged to be annulled (*faskh*) in the Qur'ān or upon the tongue of His Messenger ﷺ, then it is annulled, whether the judge likes it or dislikes it. The judge has no role in that, and also not any *ra'ī*. The judge is only an executor, by virtue of his authority, of all that Allah, the Exalted, and His Messenger ﷺ have ordered, and he is a preventer of acting upon what Allah, the Exalted, and His Messenger ﷺ have not ordered, and nothing more. And every judgment the judge rules with other than what we have mentioned, is false, rejected, and annulled forever.

Issue: The Slave and the Free Man in Īlā' Are the Same

The slave and the free man in Īlā', each of them with his wife, whether she is free, a Muslim slave woman, or a dhimmiyyah woman, whether old or young, are the same in everything we have mentioned, because Allah, the Exalted, spoke and left is general and did not specify: "And your Lord is never forgetful" [Maryam: 64].

Issue: One Who Makes Īlā' From His Four Wives With a Single Oath

Whoever makes Īlā' from his four wives with one oath, he is made to wait regarding all of them from the moment he takes the oath. If he returns to one of them, her ruling drops, but the ruling remains for the rest. He continues to be held regarding the one he has not returned to until he either returns or divorces. And there is only one kaffārah upon him in all of that, because it is a single oath upon different matters, and each wife has her own ruling. He is considered as the one who has made Īlā' from each one of them. Allah, the Exalted, said: "And no bearer of burdens shall bear the burden of another" [al-An'ām: 164].

Issue: Making Īlā' From His Slave Woman

Whoever makes Īlā' from his slave woman, there is no waiting imposed upon him, because Allah, the Exalted, said: "And if they resolve on divorce" [al-Baqarah: 227]. So it is established that the ruling of Īlā' only applies to one for whom return or divorce is binding. And in the case of a slave woman there is no divorce at all. So it is only in the case of wives. And with Allah, the Exalted, is success.

Issue: Making Īlā' From an Ajnabiyyah Woman, then Marrying Her

As for our statement regarding one who makes Īlā' from an ajnabiyyah woman, then marrying her: that the ruling of Īlā' does not apply to him, this is because Allah only said: "For those who swear abstinence from their wives" [al-Baqarah: 226]. So whoever makes Īlā' from an ajnabiyyah woman has not made Īlā' from any of his wives, so no Īlā' is upon him.

If it is said, "But she later became one of his wives?"

We say: It is impossible for the ruling to fall when it was obligatory, and then become binding when it was not obligatory. And because waiting (tarabbus) cannot occur except where returning (fay') is required, and that cannot be with an ajnabiyyah woman. And with Allah, the Exalted, is success.

The Rulings of Zihār

Issue: Uttering the Words of Zihār to the Wife

Whoever, whether a free man or a slave, says to his wife or to a female slave whom he is permitted to have intercourse with, "You are to me as the back of my mother," or says to her, "You are from me as the back of my mother," or "like the back of my mother," or similar expressions referring to the back of his mother, nothing becomes prohibited for him yet, and intercourse with her is not prohibited, until he repeats this statement a second time. If he says it a second time, the expiation (kaffārah) of zihār becomes obligatory upon him, which is the freeing

of a slave. What is sufficient is a believer and the disbeliever, male and female, the defective slave and the healthy. Whoever cannot afford to free a slave must fast for two consecutive months. It is not permissible for him to have intercourse with her, and also not to touch her with any part of his body until he expiates by freeing a slave or by fasting. If he proceeds or forgets and has intercourse before expiating through freeing a slave or fasting, he must refrain from intercourse until he expiates, and there is no other way. If he is unable to fast, he must feed sixty different needy persons until they are satisfied. Intercourse with her is not prohibited before feeding. And nothing we mentioned above becomes obligatory except when the wording, "The back of my mother," is explicitly mentioned. It is not obligatory if he says, "The private part of my mother," or mentions any other body part other than the back, or if he mentions someone other than his mother, a daughter, father, sister, and also not if it is a non-mahram woman. It is not obligatory in any of those cases. And the grandmother is a mother.

The decisive evidence for this is the words of Allah ﷻ, "Those among you who pronounce *zihār* upon their wives, they are not their mothers. Their mothers are none but those who gave them birth. And those who pronounce *zihār* upon their wives, then retract what they said, the freeing of a slave before they touch each other. This is what you are admonished with, and Allah is aware of what you do. And whoever cannot find [a slave], then fasting for two consecutive months before they touch each other. And whoever is unable, then feeding sixty needy persons." [al-Mujādalah: 2-4]

So, this verse encompasses everything that we mentioned, because Allah ﷻ only mentions the back of the mother, and expiation (*kaffārah*) becomes obligatory only upon repeating that saying. Allah obliges the freeing of a slave and He did not make a difference between a disbeliever and a believer, and also not between the defective and the sound, and also not between male and female, and also not between the adult and the non-adult, Allah said, "And your Lord is never forgetful." [Maryam: 64]

Allah ﷻ has made a condition that the freeing of a slave or fasting must occur before touching. And He did not make that condition for the expiation through feeding, “My Lord neither errs nor forgets.” [Tāhā: 52]

And Allah said, “A clarification for everything.” [al-Naḥl: 89]

Repeating one person sixty times for feeding is not sufficient, because he is not sixty persons.

And Allah ﷻ did not specify a specific type of feeding or a specific type of food, and He also did not specify a free man as from the slave.

As for the validity of our saying that him returning as mentioned in the verse only means him repeating the ḡihār statement. And the ‘return’ to the statement cannot be except by repeating it. It is because nothing else is possible in the language. And upon this came the Sunnah as ‘Ā’ishah narrated that Jamīlah bint Tha’labah, the wife of Aws ibn al-Şāmit, he used to be afflicted by lamam, so whenever it intensified he would do ḡihār of her. So Allah ﷻ revealed concerning him the expiation of ḡihār¹⁸⁹.

This necessitates repeating the words of ḡihār. And nothing is authentic about ḡihār except this narration only, except for another narration which we will mention after this, if Allah ﷻ wills. Everything else is mursal or from the narration of one in whom there is no good in. And all praise is due to Allah, Lord of the worlds.

As for one who begins fasting, then has intercourse at night before completing them [two consecutive months], or has intercourse before he expiates with emancipation [of a slave] or with fasting, it is narrated from Abū Yūsuf that he is not obliged to expiate, because he is not able to fulfill the expiation¹⁹⁰.

The statement of Abū Yūsuf would have been correct, if it would not be for what Ibn ‘Abbās narrated, “A man came to the Prophet ﷺ and said: ‘O Messenger of Allah, I did ḡihār from my wife, then I

¹⁸⁹ Sunan Abī Dāwud 2220: Şaḡīḡ

¹⁹⁰ Al-Aşl 2/219

had intercourse with her before expiating?’ So the Messenger of Allah ﷺ said to him: ‘Do not approach her until you do what Allah ﷻ has ordered.’”¹⁹¹

So it is obligatory not to transgress his ﷺ order.

As for the one who began fasting, then had intercourse with the one upon whom he did *zihār* at night before completing the two months.

Mālik said, “He must start the two months again from the beginning.”¹⁹²

This is false because intercourse at night does not invalidate the fasting of the two consecutive months. So he builds upon what he had already fasted from them. The obligation was that the two months must be completed before intercourse. But as that is no longer possible afterwards, then it is better that what remains of them after intercourse, together with what had already passed of them before intercourse, is counted, than to intend that the two full months both be after intercourse.

Issue: *Zihār* With an *Ajnabiyyah* Woman, then Repeating it, Then Marries Her

Whoever performs *zihār* with a woman who is not his wife, then repeats it, then later marries her, there is no *zihār* upon him, and no expiation.

Allah ﷻ said: “And those who perform *zihār* from their wives” [al-Mujādilah 58:3].

So He made expiation obligatory only upon the one who performs *zihār* from his wife and then returns (repeats) to what he said. He did not make that upon one who performs *zihār* from someone other than his wife.

¹⁹¹ Al-Mujtaba 3457: Ṣaḥīḥ

¹⁹² Al-Mudawwanah 2/321

Issue: Zihār, Then Repeating it a Second Time, Then a Third

Whoever performs zihār, then repeats it a second time, then a third time, there is nothing upon him except one expiation. This is because by the second time expiation has already become obligatory, as we clarified, and the third occurs independently without obligating anything. But if he repeats it a fourth time, then another expiation is obligatory. And the same is the ruling in every case where he repeats zihār: because by repeating it a second time expiation becomes obligatory, and whatever comes after that is a new beginning of zihār. If he repeats it, another expiation is obligatory. And with Allah ﷻ is success.

Issue: The One Upon Whom Expiation of Zihār is Obligatory, It is Not Omitted by Death of Anyone

Whoever becomes obliged the expiation of zihār, its obligation is not omitted from him by his death, and also not by her death, and also not by him divorcing her. It is from his wealth if he dies, whether he made a bequest (waṣiyyah) of it or not because it is among the debts owed to Allah ﷻ, and so it is to be given precedence over the debts of people.

Issue: The One Who is Incapable of All the Forms of Expiation

Whoever is incapable of all forms of expiation, then his ruling is feeding (sixty poor persons) permanently, whether he later becomes able or remains unable, whether he becomes strong enough to fast or not. This is because when he is incapable of emancipation and fasting, feeding becomes established upon him by the text of the Qur'ān, and

Allah ﷻ did not substitute anything else in its place at all. So this is the ruling of one who is incapable of emancipation of a slave and fasting. And whoever is incapable of something, Allah ﷻ did not appoint another time, so he is obliged that forever, because the order of Allah ﷻ is binding and nothing invalidates it

And whoever, at the time when the expiation of *ḡihār* became binding upon him, was able to free a slave, nothing else will ever suffice for him. If he later became poor, his matter is with Allah ﷻ, because the obligation of Allah upon him in emancipation had already become established, and nothing changes that.

And whoever is incapable of emancipation but able to fast two consecutive months, without Ramaḡān or a day in which fasting is prohibited coming between them, and his strength continues likewise until the end of the prescribed period, if he did not fast them, then later became incapable of fasting until he died, then no feeding and also no emancipation will ever suffice for him. If he regains health, he must fast them. If he dies, his walī must fast them on his behalf, because the Messenger of Allah ﷺ said: “Whoever dies while he has fasts obligatory upon him, his walī must fast on his behalf.”¹⁹³

But if his health and strength did not continue through the entire time we mentioned, then whenever he had the means during it, emancipation remains his obligation forever. If he was not able to, then feeding is his obligation forever. And with Allah ﷻ is success.

¹⁹³ Sunan Abī Dāwud 3311: Ṣaḡīḡ

The Rulings of ‘Innīn

Issue: The Man Marries But is Unable to Have Intercourse or Does not Desire Women

Whoever marries a woman but is unable to have intercourse with her, whether he had intercourse with her once, or multiple times, or never at all, then it is not permissible for the judge and also not for anyone else to separate them in any way, and also not to set for him a time. She remains his wife: if he wishes, he can divorce her, and if he wishes, he can keep her.

The decisive evidence for this is that there is nothing that obliges separation for any of these reasons in the Qur‘ān and authentic Sunnah

Those who claim that the man can be separated from the wife immediately argue with a narration ibn ‘Abbās narrated, “‘Abd Yazīd, the father of Rukānah and his brothers, divorced Umm Rukānah and his brothers, and he married a woman from Muzaynah. She came to the Prophet ﷺ and said: ‘He is of no benefit to me, except like this hair benefits another hair, and she took a hair from her head. So separate between me and him.’ Then the Messenger of Allah ﷺ was moved with protective jealousy... He ﷺ said to him: ‘Divorce her.’ So he did. Then he said: ‘Take back your wife, Umm Rukānah and his brothers.’ He said: ‘But I divorced her three times, O Messenger of Allah.’ He said: ‘I know. Take her back,’ and he recited: ‘O Prophet, when you divorce women, then divorce them at their prescribed period.’ (al-Ṭalāq: 1)”¹⁹⁴

This is weak because has only come through someone unnamed and unknown people from Banū Abī Rāfi‘. And also ‘Abd Yazīd has no

¹⁹⁴ Sunan Abī Dāwud 2196: Ḍa‘īf

established Ṣuḥbah and also not Islām. The Ṣuḥbah is only for Rukānah, his son.

If they say, “She only married him for intercourse, so if that is absent, then it is harm upon her, and harm is prohibited.”

The answer: Yes, the one who refrains from that while he is able is unjust, and it is obligatory to prevent him from that. But as for the one who is incapable, then Allah the Exalted has said, “Allah does not burden a soul beyond its capacity.” [al-Baqarah: 286]

And they have nothing to argue by other than what we have mentioned. So it is established that the man unable to is not burdened with what he has no ability to do.

There is no evidence for whoever claims a time of one year.

The decisive evidence for the validity of our statement: is that every marriage that is established by the Word of Allah, the Exalted, and the Sunnah of His Messenger ﷺ, then Allah has prohibited her skin and her private part for everyone other than him. Whoever separates them without the Qur’ān or an authentic Sunnah has entered into the description of those whom Allah, the Exalted, has blamed with His statement, “So they learn from them what causes separation between a man and his wife.” [al-Baqarah: 102]

And we seek refuge in Allah from this.

And what we said has been established from the Messenger of Allah ﷺ, as ‘A’ishah narrated, “Rifā‘ah al-Quraẓī divorced his wife. She then married ‘Abd al-Raḥmān ibn al-Zubayr. She came to the Prophet ﷺ and said: ‘O Messenger of Allah, she was under Rifā‘ah, and he divorced her on the last of the three divorces, then she married ‘Abd al-Raḥmān ibn al-Zubayr. By Allah, he possesses nothing except something like this edge of the fabric (she likened his penis in its relaxed (state) and it not spreading during intercourse to the edge of a garment¹⁹⁵),’ and she took the edge from her jilbāb. The Messenger of Allah ﷺ smiled and said: ‘Perhaps you wish to return to Rifā‘ah? Not

¹⁹⁵ Al-Miṣbāḥ al-Munīr 2/635

until you taste his ‘usaylah (pleasure from intercourse) and he tastes your ‘usaylah (pleasure from intercourse).”¹⁹⁶

This narration mentions that her husband did not have intercourse with her, and his penis was like the edge of a garment and could not reach her and she complained of this to the Messenger of Allah ﷺ and wished to separate from him. So he ﷺ did not reproach her, and did not set a time period for her, and also did not separate them. And in this is sufficient guidance for anyone with ‘aql.

Some of the opponents objected to this authentic narration just mentioned by mentioning weak narrations.

One of these comes through the *ṭarīq* of Ibn Nāfi‘ —» Mālik, from al-Mustawrid ibn Rifā‘ah —» al-Zubayr ibn ‘Abd al-Raḥmān ibn al-Zubayr, “Rifā‘ah ibn Simwāl divorced his wife during the time of the Messenger of Allah ﷺ three times, and then ‘Abd al-Raḥmān ibn al-Zubayr married her. He approached her but was unable to have intercourse with her, so he separated from her. Rifā‘ah, her first husband, wanted to marry her again. The Prophet ﷺ said: ‘It is not permissible for you until she tastes his ‘usaylah.’”¹⁹⁷

This is weak as al-Zubayr ibn ‘Abd al-Raḥmān ibn al-Zubayr al-Qurṭubī, al-Mustawrid ibn Rifā‘ah and al-Miswar ibn Rifā‘ah are all *majhūl*. And this narration has not come except through them so it falls apart entirely. And even if it would be authentic, it would not contradict the narration we mentioned, because we do not deny that ‘Abd al-Raḥmān could divorce her voluntarily. So their objection collapses entirely.

The second narration is what is narrated by ibn Qāni‘ —» Yaḥyā ibn Muḥammad al-Bakhtarī —» Hudbah ibn Khālīd —» Wuhayb ibn Khālīd —» Hishām ibn ‘Urwah —» ‘Urwah —» ‘A’ishah, “Rifā‘ah’s wife came to the Prophet ﷺ ... (and mentioned the narration up to the words): ‘You shall not permit him until he tastes your ‘usaylah and you

¹⁹⁶ Ṣaḥīḥ Muslim 1433, 112: Ṣaḥīḥ

¹⁹⁷ Al-Muwatta’ Riwāyah Yaḥyā 1516, 2/36

taste his.’ She said: ‘O Messenger of Allah, he did not have intercourse with me except once.’”

This is weak because ‘Abd al-Bāqī ibn Qānī’ is weak, he insisted on purpose on many mistakes¹⁹⁸ and is munkar al-ḥadīth¹⁹⁹.

And the third is what is narrated from ibn Wahb —» ‘Abd al-Raḥmān ibn Abī al-Zinād —» Hishām ibn ‘Urwah —» ‘Urwah —» ‘A’ishah, regarding the wife of Rifā‘ah al-Qurzī, who said: “O Messenger of Allah, he had intercourse with me once.”²⁰⁰

This is weak because ‘Abd al-Raḥmān ibn Abī al-Zinād is weak.

And it is besides that established that the wording, “Intercourse once (hanah),” is a fabrication against the Messenger of Allah ﷺ. That wording only came authentic in what ‘A’ishah narrated, “A man divorced his wife, and she married another husband who then divorced her. She was with him like the edge of a garment, and she did not attain from him what she desired. He soon divorced her. She then came to the Prophet ﷺ and said: ‘O Messenger of Allah, my (first) husband divorced me, and I married another husband who entered upon me (for intercourse), but he had nothing more than what was like an edge of a garment. He did not approach me except one time, from which I gained nothing. Am I now permissible for my first husband?’ The Messenger of Allah ﷺ said: ‘You are not permissible for your first husband until the other husband tastes your sweetness and you taste his sweetness.’”²⁰¹

We do not prevent the incapable man of having intercourse (al-‘innīn) from divorcing if he wishes. Instead, we prevent and reject the forced separation between them, or delaying a year and then separating them. This is falsehood, which is never authentically narrated.

¹⁹⁸ Su‘ālāt Ḥamzah al-Sahmī 334, pg. 236 | Su‘ālāt al-Sulamī 206, pg. 206

¹⁹⁹ Al-Muḥallā 7/22

²⁰⁰ Al-Muwatta’ Riwāyah ibn Wahb 263

²⁰¹ Ṣaḥīḥ al-Bukhārī 5265: Ṣaḥīḥ

The Rulings of Qasm

Issue: A Man Marries a Virgin While He Already Has Another Wife

Rulings of dividing time between wives: If a man marries a virgin, whether she is free, a slave, Muslim, or a kitābiyyah woman, while he already has another wife, whether free or a slave, he can dedicate seven nights specifically with the virgin. After that, he begins dividing his time equally among his wives, and he does not count those seven nights against her, and also not deduct anything from them. If he marries a previously married woman (thayyib), whether free or a slave, while he already has another wife, whether free or a slave, Muslim or kitābiyyah, then he can dedicate three nights specifically with her. After that, he begins dividing (his time) and dealing justly, and he does not count those three nights against her. But if he increases beyond three, then he must stay with the other wife for the same number of nights as he stayed with her, equally, and with that her special entitlement of preference is nullified. And it is not permissible for him, in all of what we have mentioned, whether he has another wife or not, to neglect attending the congregational prayer in the masjid, and also not the Friday prayer. If he does that, it is a sin and a blemish upon him, just like anyone else, without difference. And it is not permissible for him to single out one of his wives to travel with him, except by drawing lots.

Abū Bakr ibn ‘Abd al-Raḥmān narrated from Umm Salama, “When the Messenger of Allah ﷺ married Umm Salama, he ﷺ stayed with her for three (nights) and said: ‘There is no diminishment for you in the rights of your household. If you wish, I may stay with you for seven (nights), and if I stay seven (nights) with you, I will also stay seven (nights) with my other wives.’”²⁰²

²⁰² Ṣaḥīḥ Muslim 1460, 41: Ṣaḥīḥ

As for the narration narrated from ‘Amr ibn Shu‘ayb, and Muḥammad ibn Ishāq, that both of them that the Messenger of Allah ﷺ said, “For the virgin are three [days].”

This is mursal and no mursal is ever a ḥujjah.

And as for the narration in which the Messenger of Allah ﷺ said, “Whoever has two wives and inclines toward one of them will come on the Day of Resurrection with one side of him leaning.”

The one who said this statement is the same one who ruled that the virgin is entitled to seven nights and the previously married woman to three nights. And it is not permissible for anyone to abandon one statement of him ﷺ for another statement of him as long as it is possible to act upon both either by combining them together, or by making an exception of one from the other. Whoever transgresses beyond this is disobedient to Allah and to His Messenger ﷺ.

And from the wonders of this world is that the Ḥanafīs, who oppose the Messenger of Allah ﷺ here with their corrupt whims, obligate in division that the free wife [is given] two nights and the slave-wife one night. And this is the real inclination which the Prophet threatened in the narration mentioned, especially with their statement that the Jewish and Christian free woman is given two nights, and the Muslim slave woman one night, and they do not feel shame from this false preference!

And another astonishing matter is that they permit a man who has a free Muslim wife and a Christian slave woman to divide [his nights] by giving the free woman one night and the Jewish slave three nights! So be amazed at these scandals.

And they have here objections that testify to the lack of modesty, and the weakness of religion such as them clinging to his ﷺ statement, “If I allotted seven [for you], then I allotted seven for my wives.”²⁰³

So they say, “This ḥadīth necessitates equality.”

²⁰³ Ṣaḥīḥ Muslim 1460, 41: Ṣaḥīḥ

Then they forgot themselves with the saying of the Prophet in which he made three. So with their weak ‘aql, they object to the Prophet ﷺ, attempt to teach him ﷺ justice and calculation!

If they say, “What is your ruling if he stayed with the previously married woman more than three but less than seven, or more than seven? Or if he stayed with the virgin or the previously married woman more than seven.”

We say: Yes, if he stayed with the previously married woman more than three and less than seven, then he only accounts for her with what exceeds three.

And as for him staying with her or with the virgin more than seven, then he must account the previously married woman for all that he stayed with her, and give her co-wife or co-wives the same. As for the virgin, he only accounts for what exceeds seven.

The decisive evidence of this is that three days are the right of the previously married woman, and seven days are the right of the virgin. Whatever exceeds these two amounts is injustice, and he must account for it.

And the right of the previously married woman in the three is not omitted except where Allah omitted it upon the tongue of His Messenger ﷺ and that is only if he gave her seven or exceeds upon seven. Because exceeding seven is ‘making it seven’ and also an addition over it, and her right in the three has already been omitted by the seven. So when it is omitted, it does not return by exceeding seven. And by Allah is all success.

As for neglecting the congregational prayer, we have mentioned it in the ‘Book of Prayer’ that the Messenger of Allah ﷺ made it obligatory, and he threatened to burn the houses of those who abandoned it without excuse.

And indeed, he ﷺ married, and in giving seven nights (to a virgin) or three (to a previously married woman) he did not abandon the congregational prayer or the Friday prayer. This is instead only a misguidance invented by Shayṭān.

As for traveling with one of his wives, or two, or three, then it can only be by casting lots, because this has been established from the Messenger of Allah ﷺ, as ‘Ā’ishah narrated, “The Messenger of Allah ﷺ, whenever he set out, would cast lots among his wives. The lot fell upon ‘Ā’ishah and Ḥafṣah, so they went out with him.”²⁰⁴

If he went out with her, as we mentioned, by casting lots, he does not reckon with them for their nights with him in travel, because he took them by right, not by inclination or injustice. But if he went out with her without casting lots, then he must reckon with them for those nights, and it becomes obligatory upon him to repay the one he did not travel with the same number of nights.

Abū Ḥanīfah, and Mālik and his companions, said, “He may go out with her without casting lots.”

This is false, because justice between wives is an obligation, as we have mentioned. It is not permissible to make exceptions to any of that except by a text, and the text specified only travel by casting lots. Anything besides that is injustice. And with Allah the Exalted is success.

If it is said, “Is it allowed for him not to travel with any one of them?”

We say: Yes, and that is fairness among them in withholding, so in that he is not inclining toward one over the others. But if he travels without casting lots with one of them, then indeed he has inclined toward her, and this is injustice which is not permissible. And with Allah the Exalted is success.

²⁰⁴ Ṣaḥīḥ al-Bukhārī 5211: Ṣaḥīḥ

Issue: It is not permissible for a man to allot nights to his Umm Walad or Slave Girl

It is not permissible for a man to allot (time) to his umm walad (the slave girl that has a child from him), and also not to his slave girl, along with his wife if he has one. There is no disagreement regarding this.

The decisive evidence is the saying of Allah ﷻ, “But if you fear that you will not be just, then [marry] only one, or those your right hands possess.” [al-Nisā’: 3]

So Allah did not make for those owned by the right hand (concubines) any right for which justice (in dividing times) must be fulfilled. As they have no right in division of time, it is not permissible for one who has no right in it to share with the one who does.

But if the wife willingly allows this, then it is allowed for the man to allot (nights) to his slave girl, because it is the wife’s right which she willingly abandoned. But it remains permissible for him to have intercourse with his slave girl whenever he wishes, just as the Messenger ﷺ did with Māriyah, on the day of whichever wife he wished, without dividing times.

Issue: The Limit of Dividing Time Among Wives

The limit of division of time among wives is from one night up to seven nights for each one, and it is not permissible for him to allot more than seven.

Some have said, “He must not allot more than three nights for each one.”

And a group said, “He must not allot more than one night for each one.”

The decisive evidence for the correctness of our saying of the correctness of our saying is what we have already mentioned in the previous chapter from the saying of the Messenger of Allah ﷺ to Umm

Salamah (may Allah be pleased with her), “If I allot you seven (nights), then I must allot seven to my wives.”

So it is established that the husband can allot up to seven, and anything less than seven is permissible, by the permissibility of seven because it is some of the seven.

As for exceeding seven, it is prohibited because of what we mentioned before about the obligation of justice between them.

And if more than seven would be permitted, then it would be permissible for him to remain with one wife as long as he wants, even for years, while saying, “I will allot the same to the others.” This is false and injustice.

So it is established that only the number of nights allowed by the text is permissible. If not for this narration, it would not be permissible for more than a single night. And with Allah ﷻ is success. And one night is more beloved to us, because this is how the authentic narrations have come regarding the dividing time between the wives of the Messenger of Allah ﷺ among the Mothers of the Believers

Issue: A Woman Gifting Her Night to Her Co-Wife

If a woman gifts her (turn of the) night to her co-wife, this is valid. But if she later changes her mind and wishes to retract that, then she has the right to have that.

The decisive evidence for this is what ‘Ā’ishah narrated, “Sawdah bint Zam‘ah, when she became old, said: ‘O Messenger of Allah, I have given my day with you to ‘Ā’ishah.’ So the Messenger ﷺ used to allot for ‘Ā’ishah two days: her own day and the day of Sawdah.”²⁰⁵

It has also been authentically narrated that when the Messenger ﷺ was in his final illness, in which he passed away, he sought

²⁰⁵ Ṣaḥīḥ Muslim 1463, 47: Ṣaḥīḥ

permission from his wives to be nursed in the house of ‘Ā’ishah, and they granted him that permission.

As for our statement that she may retract her gift: this is because each day is other than the day before it, without doubt, and it is not permissible to gift something unknown. It is only permitting for that specific day when it comes. So she has the right not to make that permission and to hold on to the right which Allah ﷻ has granted her.

The Rulings of Intercourse

Issue: A Man Can Have Intercourse With All of His Wives and His Slave Girls in One Occasion

It is permissible for a man to have intercourse with all of his wives and his slave girls in one occasion. If he purifies himself between every two, then that is better. And if he does not perform ghusl except at the end, that is good, and there is no dislike in that.

Anas ibn Mālik narrated, “The Messenger of Allah ﷺ used to go around to his wives in one night, then performed one ghusl.”²⁰⁶

Slave-girls are included under a man’s ‘women’, for Allah the Mighty and Majestic said, “It has been made permissible for you, on the nights of fasting, to approach your women (for intimacy).” [al-Baqarah: 187]

And it is a good act to perform ghusl between every two of them, there is no prohibition on that, it is not obligatory. And with Allah ﷻ is success.

²⁰⁶ Al-Sunan al-Kubra 8988, 8/208: Ṣaḥīḥ

Issue: Anal Intercourse

If it is safe there is nothing that prohibits this from the Qur‘ān and authentic Sunnah.

As for the narration attributed to the Prophet ﷺ by Abū Hurairah, “The one who has intercourse with his wife from her anus is cursed.”²⁰⁷

This is weak: It is narrated by five different ṭuruq, all of them up to al-Ḥārith ibn Mukhallad —» Abū Hurairah —» the Prophet ﷺ.

And this is weak as al-Ḥārith ibn Mukhallad is majhūl ul-ḥāl.

And the same for the narration attributed to the Prophet ﷺ, “Allāh does not look (have mercy) on the one that has intercourse with the woman in her anus.”²⁰⁸

This is weak because it has also come from al-Ḥārith ibn Mukhallad and he is majhūl ul-ḥāl.

As for what is narrated about Abū Hurayrah from the Messenger of Allah ﷺ that he ﷺ said, “Whoever enters his woman in her anus then he has disbelieved in what is revealed to Muḥammad ﷺ.”²⁰⁹

This is weak: It is narrated by seven different ṭuruq, and all of them up to Ḥammad ibn Salamah —» Ḥakīm al-Athram —» Abū Tamīmah (who is Ṭarīf ibn Mujālid) —» Abū Hurairah —» the Prophet ﷺ.

This is weak because of the weakness of Ḥakīm al-Athram, he is munkar al-ḥadīth.

As for what is narrated about ‘Alī ibn Ṭalq to the Prophet ﷺ, “Do not have intercourse with women in their anuses, for indeed Allah does not shy away from the truth.”²¹⁰

²⁰⁷ Sunan Abī Dāwud 2162: Ḍa‘īf

²⁰⁸ Sunan ibn Mājah 1923: Ḍa‘īf

²⁰⁹ Sunan Abī Dāwud 3904: Ḍa‘īf

²¹⁰ Musnad Aḥmad 655, 24250, 24251, 24253: Ḍa‘īf

This is narrated by six different ṭuruq, all of them up to ‘Āṣim al-Aḥwal —» ‘Īsā ibn Ḥittān —» Muslim ibn Sallām —» ‘Alī ibn Ṭalq —» the Prophet ﷺ.

And this is also narrated by three different ṭuruq, all of them up to Wakī’ ibn al-Jarrāḥ —» ‘Abd al-Malik ibn Muslim ibn Sallām —» his father (Muslim ibn Sallām) —» ‘Ali ibn Ṭalq —» the Prophet ﷺ.

This is weak because Muslim ibn Sallām is majhūl ul-ḥāl and ‘Īsā ibn Ḥittān is also majhūl ul-ḥāl.

As for what is narrated about Khuzaymah ibn Thābit from the Prophet ﷺ that he said, “Do not have intercourse with women in their anuses.”²¹¹

This is weak because Haramī ibn ‘Abdullah is majhūl ul-ḥāl.

For this narration with the same wording, there is a ṭarīq narrated by Sufyān ibn ‘Uyaynah —» Yazīd ibn ‘Abdullah ibn Usāmah ibn al-Hād —» ‘Umārah ibn Khuzaymah ibn Thābit —» his father (Khuzaymah ibn Thābit) —» the Prophet ﷺ.²¹²

The ṭarīq mentioned by Sufyān ibn ‘Uyaynah in this manner is a mistake of him²¹³, ‘Umārah has no aṣl in this narration, this is only narrated from Yazīd ibn ‘Abdullah ibn Usāmah ibn al-Hād —» ‘Ubaydullah ibn ‘Abdullah ibn al-Ḥuṣayn —» Haramī ibn ‘Abdullah —» Khuzaymah ibn Thābit —» the Prophet ﷺ. And that is weak because Haramī ibn ‘Abdullah is majhūl ul-ḥāl.

As for what is narrated by ‘Amr ibn Shu‘ayb —» his father —» his grandfather —» the Prophet ﷺ said regarding the one who has intercourse with his wife in her anus, “It is the minor form of homosexuality (lūṭiyyah).”²¹⁴

²¹¹ Sunan ibn Mājah 1924: Ḍa‘īf

²¹² Al-Sunan al-Kubra 8933, 8/191: Ḍa‘īf

²¹³ Āḍab of ibn Abī Ḥātim pg. 164-165 | ‘Ilal al-Ḥadīth 1206, 3/316-317 | Sunan al-Kubrā of al-Nasā’ī 8934, 8935, 8/192 | Musnad Aḥmad 21874, 36/99 | Ṣaḥīḥ ibn Ḥibbān 4198, 9/512 | Al-Taqrīb 7276 | Tahdhīb al-kamāl 26/499

²¹⁴ Musnad Aḥmad 6967, 6968, 6706: Ḍa‘īf

This is weak because the silsilah ‘Amr ibn Shu‘ayb —» his father —» his grandfather is a munqaṭi‘ah wijādah. And the fact that the grandfather wrote narrations from the Prophet ﷺ is not an indication that what ‘Amr ibn Shu‘ayb found from what is written and attributed to his father —» grandfather, is that which he wrote from the Prophet ﷺ.

As for what is narrated about ibn ‘Abbās from the Prophet ﷺ, “Allah does not look at a man who has intercourse with another man, or a woman in her anus.”²¹⁵

This is narrated by two ṭarīqān, all up to Sulaymān ibn Ḥayyān, Abū Khālid al-Aḥmar —» al-Ḍaḥḥāk ibn ‘Uthmān —» Makhramah ibn Sulaymān —» Kurayb —» ibn ‘Abbās —» the Prophet ﷺ.

This is weak as al-Ḍaḥḥāk ibn ‘Uthmān is weak.

As for what is narrated about Jabir ibn ‘Abd Allah al-Anṣārī, that the Messenger of Allah ﷺ said, “Be modest, for indeed Allah does not shy away from the truth. It is not permissible for you to come to women in their private parts.”²¹⁶

This is weak as Ismā‘īl ibn ‘Ayyāsh is weak.

As for what is narrated about ibn ‘Abbās, “‘Umar ibn al-Khaṭṭāb came to the Messenger of Allah ﷺ and said: ‘O Messenger of Allah, I am ruined.’ He ﷺ asked: ‘And what has ruined you?’ He said: ‘I turned my saddle backward last night.’ He ﷺ did not reply to him. Then Allah revealed to His Messenger this verse: ‘Your wives are a tilth for you, so approach your tilth as you wish.’ [al-Baqarah: 223], ‘Face forward, and backward, and avoid the anus and the menstrual period.’”²¹⁷

This is weak because Ja‘far ibn Abī al-Mughīrah is not strong in Sa‘īd.

Umm Salamah narrated, “When the Muhājirūn came to al-Madīnah to the Anṣār, they married their women. The Muhājirūn used

²¹⁵ Sunan al-Tirmidhī 1165: Ḍa‘īf

²¹⁶ Sunan al-Dāraquṭnī 3750, 4/438: Ḍa‘īf

²¹⁷ Sunan al-Tirmidhī 2980: Ḍa‘īf

to do tajbiyah (approaching from behind in intercourse), while the Anṣār did not do tajbiyah. So a man from among the Muhājirūn wanted this from his wife, but she refused until she could ask the Prophet ﷺ. She went to him but was too shy to ask him, so Umm Salamah asked him on her behalf. Then was revealed: ‘Your wives are a tilth for you, so come to your tilth however you wish.’ [al-Baqarah: 223] And he said: ‘No, except in one hole (channel).’²¹⁸

This is weak as ‘Abdullah ibn ‘Uthman ibn Khuthaym is weak.

And it is also narrated about the Prophet ﷺ, “Do not enter the women in their maḥāsh.”²¹⁹

This is weak as ibn Lahī‘ah is weak.

And there exists nothing else in the nuṣūṣ about the prohibition of anal intercourse.

Issue: Intercourse With a Woman Pregnant From Someone Else

It is prohibited to have intercourse with any woman that is pregnant from someone else, whoever does it is disciplined.

The decisive evidence for that is what Abū al-Dardā’ narrated, “The Prophet of Allah ﷺ came upon a woman in the advanced stage of pregnancy at the door of a tent. He ﷺ said: ‘Perhaps he (the man with her) intends to approach her (for intercourse).’ They replied: ‘Yes.’ The Messenger of Allah ﷺ then said: ‘I was about to curse him with a curse that would accompany him into his grave. How could he attribute the child to himself when that is not lawful for him? And how could he use him as a servant when that too is not permissible for him?’”²²⁰

²¹⁸ Musnad Aḥmad 26698, 44/295-296: Ḍa‘īf

²¹⁹ Al-Kāmil 5/243: Ḍa‘īf

²²⁰ Ṣaḥīḥ Muslim 1441, 139: Ṣaḥīḥ

Issue: Preventing the Semen From Flowing in Her Vagina

Preventing the semen from flowing into her vagina (‘azl) is allowed and not prohibited.

As for what Judāmah daughter of Wahb, the sister of ‘Ukkāshah narrated, “I was present with the Messenger of Allah ﷺ among a group of people, and he was saying: ‘I had thought of prohibiting al-ghīlah, but then I looked at the Byzantines and the Persians, and saw that they practice it while nursing their children, and it does not cause any harm to their children.’ Then they asked him about ‘azl, so the Messenger of Allah ﷺ said: ‘That is the hidden form of burying alive (al-wa’d al-khafī): ‘And when the female infant who was buried alive is asked [al-Takwīr: 8].’”²²¹

This does not indicate anything except a dislike (karāha) not a prohibition, because it is not made similar with the ruling of burying a newborn, there is no qīṣāṣ made against the one doing it, and no ruling of a killer against the one doing it. So it is established that that these wordings only indicate a dislike. And this is especially the case as wa’d is killing in the language. And as it is not resembled in ruling it is also not prohibited.

If they mention the verse, “My Lord has only forbidden immoralities what is apparent of them and what is concealed.” [7:33]

And say, “The Prophet ﷺ called it here a hidden/concealed, so it is prohibited.”

And if they say, “It is some of wa’d by the words of the Prophet ﷺ and the ruling for some from the whole is the same as some part of it.”

This is false because then it would be the same in ruling as someone who buries alive a newborn and would have the ruling of the one that kills. There is nothing in that verse except that what is

²²¹ Ṣaḥīḥ Muslim 1442, 141: Ṣaḥīḥ

prohibited, is prohibited between two people which is a secret and also for doing it openly, nothing more.

And what indicates the correctness of what we said with certainty further is that the Prophet ﷺ said in an authentic narration about ‘azl, “There is no soul that is to exist until the Day of Resurrection except that it will come into existence.”²²²

So it is then certain that the Prophet ﷺ only likened ‘azl to burying alive the newborn in the aspect of obstructing the path of childbirth and by necessity, not every obstruction is prohibited, so it is not a prohibition.

And also it is authentically narrated from the Prophet ﷺ that he said about ‘azl, “Lā ‘alaykum an lā taf‘alū.”²²³

And the meaning of this according to the naḥwiyyīn is, “There is no harm (la ba‘ṣ) upon you if you do not do it,” that there is a ḥadhf of ‘ba‘ṣ’ (harm) made. And that the meaning of the narration with the wording, “Lā ‘alaykum an lā taf‘alū,” is: “What problem is there for you if you do not do it?”²²⁴

So it is established from all aspects that it is disliked (makrūh) and not prohibited and all praise is for Allāh.

²²² Ṣaḥīḥ al-Bukhārī 2542: Ṣaḥīḥ

²²³ Ṣaḥīḥ al-Bukhārī 2229, 2542, 4138, 6603: Ṣaḥīḥ

²²⁴ Lisān al-‘Arab 11/441

The Rights of The Wife and Husband

Issue: Kindness Towards Wives is Obligatory

Kindness towards the wives is obligatory, and it is not permissible to pursue what they are wrong in. Whoever returns from a travel at night must not enter his house except during the day, and whoever returns during the day must not enter except at night, except if there is an excuse preventing him.

The decisive evidence for this is the saying of Allāh, the Exalted, “And live with them in kindness.” [An-Nisā’: 19]

And the saying of Allāh, “And do not harm them so that you make life difficult for them.” [At-Ṭalāq: 6]

As it is prohibited to make life difficult for them, Allāh, the Exalted, has obliged leniency and has obliged leaving them free from harm.

And Jābir ibn ‘Abd Allāh narrated, “The Messenger of Allāh ﷺ addressed the people and said many words, including: “Fear Allāh regarding women, for you have taken them under Allāh’s protection, and you have made their private parts permissible by the word of Allāh. You have rights over them that they should not let anyone you dislike enter your bed. If they do this, strike them lightly, and they have a right to be provided for and clothed in a proper manner.”²²⁵

The Messenger of Allāh ﷺ did not mean here the bed (firāsh) in which is slept, that is a matter for which stoning is obliged upon the married woman, so he did not order except light striking. He ﷺ only meant without doubt everything that is furnished (muftarash) in the house. So this is a prohibition against letting enter his house who he does not want (to enter), whether man or woman. This will be clarified in the following issue.

²²⁵ Ṣaḥīḥ Muslim 1218: Ṣaḥīḥ

And Abū Hurayrah, narrated from the Prophet ﷺ, “Treat women well.”²²⁶

And Jābir ibn ‘Abd Allāh narrated, “The Messenger of Allāh ﷺ prohibited that a man returns to his family at night, suspecting them or seeking out their faults.”²²⁷

And Jābir ibn ‘Abd Allāh narrated, “We returned with the Messenger of Allāh ﷺ from a campaign. When we were about to enter, he said: ‘Delay entering until night so that the woman with disheveled hair may comb it, and the one whose husband has been away may shave her pubic hair.’”²²⁸

If it is said: “Is this a contradiction?”

We say: Not at all. Instead the Messenger of Allāh ﷺ clarified his intent in both narrations. In the first narration he mentioned that he must not enter at night so as not to follow a fault, whether it exists or not, and it is then established that this ruling applies to the one who arrives at night. In the second narration, he ﷺ clarified that one who arrives during the day must wait until night to enter, after his presence has been announced to his household, so that the hair may be combed and arranged. Contradiction is not attributed to the words of the Messenger of Allāh ﷺ except by a kāfir. We seek refuge in Allāh from all of that.

Issue: It is Permissible For a Woman to Give charity From Her Husband’s Wealth Without Causing Harm

A woman can give charity from her husband’s wealth without causing with that harm, only in a way that does not affect his wealth, whether he permitted that for her or prohibited it, whether he likes it or not.

²²⁶ Ṣaḥīḥ Muslim 1468, 62: Ṣaḥīḥ

²²⁷ Ṣaḥīḥ Muslim 715, 184: Ṣaḥīḥ

²²⁸ Ṣaḥīḥ al-Bukhārī 5079: Ṣaḥīḥ

Abū Hurayrah narrated, “The Messenger of Allah ﷺ said: ‘A woman must not fast while her husband is present except with his permission, and she must not allow anyone into his house while he is present except with his permission. And whatever she spends from his earnings without his order, then half of the reward is for him.’”²²⁹

And ‘Ā’ishah narrated, “The Messenger of Allah ﷺ said: ‘If a woman spends from her husband’s household without causing harm, she has her reward, and he has the like of it because of what he earned, and she has hers because of what she spent, and the treasurer has the like of that, without any of their rewards being diminished.’”²³⁰

This wording includes has an addition on what we narrated through the ṭarīq of Maṣṣūr from Shaqīq in this narration, he said in it: “From the food of her household.”

Some of the bold ones who oppose the Sunnah objected, saying, “This ḥadīth is from the narration of Abū Hurayrah, and Abū Hurayrah was asked, ‘Can a woman give charity from her husband’s house?’ He said: ‘No, except from her own portion of food. The reward is shared between them. And it is not permissible for her to give charity from her husband’s household except with his permission.’”

This is false and not a ḥujjah, the fatwa of the same companion that narrates it from the Prophet ﷺ and others do not invalidate their narration from the Prophet ﷺ. How many times has the companion opposed with his fatwa what he narrated from the Prophet ﷺ while other companions have concurred on what he also narrated? That is nothing but certainty that there is no value to the fatwa and that it does not invalidate his narration from the Prophet ﷺ.

And Asmā’ bint Abī Bakr al-Ṣiddīq said, “O Messenger of Allah, I have nothing except what al-Zubayr provides me with. Is there any sin upon me if I give in charity from what he brings to me?” The

²²⁹ Ṣaḥīḥ Muslim 1026, 84: Ṣaḥīḥ

²³⁰ Ṣaḥīḥ Muslim 1024, 81: Ṣaḥīḥ

Prophet ﷺ said: “Give in charity as you are able, and do not withhold, for Allah will withhold from you.”²³¹

The hearing of Ḥajjāj from Ibn Jurayj is authentic, but that is how he narrates it, by saying, “Ibn Jurayj said.” And Ḥajjāj would after his ikhtilāf not narrate to anyone so it is authentic.

Allah said, “The Prophet is closer to the believers than their own selves.” [al-Aḥzāb: 6]

And He said, “It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, that they should have any choice in their affair.” [al-Aḥzāb: 36]

So if the Prophet ﷺ permitted this, then the husband has absolutely no right to prevent it.

Issue: Obedience to the Husband and Serving Him

It is not obligatory upon the woman to serve her husband in anything whatsoever, not in kneading (dough), and also not in cooking, and also not in spreading (bedding), and also not in sweeping/cleaning, and also not in weaving, and also not in anything else at all. But if she does that, then that is better for her. Instead the husband, is obliged to bring her clothing, sewn and complete, and food that is edible. There is no such thing as obedience being for the husband for everything except what is a sin, what is only obligatory on her is to keep good companionship with him, not to fast voluntarily while he is present except with his permission, not to admit into his house anyone he dislikes them entering, not to withhold herself from him whenever he desires for her intercourse, and to guard whatever wealth of his he entrusts her with. And what is obligatory on the wife is that she must show gratitude to him for his good treatment towards her and not deny his favor. And it is not obligatory upon the women to ask the husband permission to leave the house.

²³¹ Ṣaḥīḥ Muslim 1029, 89: Ṣaḥīḥ

Some people said, “It is obligatory upon the woman to serve her husband in everything.”

If they mention for this the narration authentically established from ‘Alī ibn Abī Ṭālib who said, “Fāṭimah complained to me that her hand had blistered from grinding flour, and that she informed the Messenger of Allah ﷺ of this when she asked him for a servant.”²³²

And with the established narration through the path of Asmā’ bint Abī Bakr, who said, “I used to serve al-Zubayr in the service of the household. He had a horse, and I would tend to it, gather fodder for it, and take care of it.”²³³

And with the established narration also from the ṭarīq of Asmā’ that she used to feed al-Zubayr’s horse, draw water, stitch his gharb (large bucket), knead the dough, and carry the date pits on her head from his land, which was at a distance of about two farsakhs. The Messenger of Allah ﷺ once met her while she was carrying them²³⁴.

So they say, “So these women in the presence of the Prophet ﷺ did these hard tasks and the Prophet ﷺ saw them in difficulty and did not prohibit the husband from tasking them, and if they were in such situations.”

The answer: There is no ḥujjah for the people of this saying in any of these narrations, there is in none of them and also not in any other narration that the Messenger of Allah ﷺ ordered them to do that. While it is recommended and rewarding, they did it voluntarily, being people of virtue and goodness, may Allah be pleased with them both. We do not prohibit this if a woman volunteers for it.

If they mention the verse, “But if they obey you, then do not seek a way against them.” [al-Nisā’: 34]

The answer: The beginning of the verse clarifies what this obedience is. Allah the Exalted said, “And those from whom you fear

²³² Ṣaḥīḥ al-Bukhārī 3113: Ṣaḥīḥ

²³³ Ṣaḥīḥ Muslim 2182: Ṣaḥīḥ

²³⁴ Ṣaḥīḥ Muslim 2182, 34: Ṣaḥīḥ

sin, admonish them, forsake them in the beds, and strike them. But if they obey you, then do not seek a way against them.” [al-Nisā’: 34]

It is then established that this ‘obedience’ is only when she sins, disobeys Allah, not for anything other than that. And the Messenger of Allah ﷺ has already clarified what is obligatory upon a man towards his wife, which we have mentioned two issues before this one. The Messenger of Allah ﷺ clarified that upon us (men) is their sustenance and clothing, according to what is customary (ma‘rūf). So it is established what we said: that it is upon the husband to provide her with her sustenance in a manner that enables her to eat it, and with clothing in a manner that enables her to wear it. Because that which cannot be eaten in the state it is and wearing except through kneading and cooking, and spinning and weaving, and fulling and dyeing, and sewing that is not sustenance and also not clothing in a ma‘rūf manner. This is something over which there is no disagreement, whether in language or in observation.

As for safeguarding what of his wealth is entrusted to her, then that is an obligation without dispute.

As for the verse, “Men are in charge of women (qawwāmūn) by what Allah has given one over the other and what they spend from their wealth.” [4:34]

The answer: Qawwām of her in the language is being in charge of her, it is from saying, “I undertook your affair (qumtu bi amrika).” So men are entrusted with their concerns and matters²³⁵. So it is an obligation upon the men, there is not in the words of this verse that Allah made obedience obligatory upon women to men in everything, this is also not implied from the words of the verse. Whoever claims that qawwām implies obedience to the one in charge has lied, this claim has only come from other than Allah and his Messenger. As clarified it means in the language only in charge, which is being entrusted with her matter and that is only by managing their affairs and that is fulfilled by

²³⁵ Al-Muḥkam of ibn Sīdah 6/592 | Lisān al-‘Arab 12/497

the person that is in charge by him fulfilling his specified obligations, nothing more than whoever claims more than this has lied against Allah and His Messenger. And even if that would be the case there is only in it that there are specified obligations by which the men are in charge of the women in those matters only.

And as for the verse, “The righteous women are obedient, and guard in the husband’s absence what Allah orders them to guard.” [4:34]

The answer: The “Women are obedient,” is an independent sentence, not conjugated to what came before it, so obedience is only to Allah in what He made obligatory upon her about the husband, even if that would not be the case her obedience is also only in what Allah made obligatory upon her, not him. And whoever obligates the woman a type of serving or obedience not another serving or another obedience has legislated what Allah the Exalted did not permit, and has spoken with what is false, with that for which there is no texts from the Qur‘ān and Sunnah. And anyone that obliges obedience upon a woman to her husband in everything is of this description as all of them specify out some.

As for the verse, “But the men (husbands) have a degree over them.” [al-Baqarah: 222]

This verse is only an information that the husband have a degree over the woman in an aspect, this does not imply the obligation of obeying what he orders.

As for the ḥadīth attributed to the Prophet ﷺ, “When a woman performs her five daily prayers, fasts during Ramaḍān, safeguards her chastity, and obeys her husband, she may enter through any of the gates of Paradise she wishes.”²³⁶

This is weak, all its ṭuruq are not free from Ibn Lahī’ah, Ḥudbah ibn al-Minhāl, Rawwād ibn al-Jarrāḥ, Mūsā ibn Wardān and al-Rabī’

²³⁶ Musnad Aḥmad 1661, 3/199: Ḍa‘īf

ibn Şubaiḥ, Yazīd al-Raqāshī and Dāhir ibn Nūḥ al-Ahwāzī and all of them are weak.

As for the narration attributed to the Prophet ﷺ in which he called the wives the captives/slaves of the husband²³⁷.

This is weak because it has not come except from Sulaymān ibn ‘Amr ibn al-Aḥwaṣ and he is majhūl and through ‘Ali ibn Zayd ibn Jud‘ān who is weak.

And as for the narration attributed to the Prophet ﷺ in which he said about what equals to reward of jihād for women, “Their obedience to their husbands and their recognition of their rights, and only a few of you do that.”²³⁸

This is weak because Yaḥyā ibn al-‘Alā’ al-Bajalī al-Rāzī and Rishdīn ibn Kurayb ibn Abī Muslim are weak.

As for a woman asking permission to go out: the narration attributed to the Prophet ﷺ, “She must not leave her house except with his permission. If she does, the angels of Allah, the angels of mercy, and the angels of wrath will curse her until she repents or returns.”²³⁹

This is weak, it has not come except from Layth ibn Abī Sulaym who is weak and others through ‘Abd al-Nūr ibn ‘Abdullah²⁴⁰ and who is also weak.

And this narration has come from other ṭuruq through al-Ḥusayn ibn Qays²⁴¹, and he is also weak.

As for the narration attributed to the Prophet ﷺ, “It is not allowed for a woman who believes in Allah and the Last Day to go out while he dislikes it, and also not to obey anyone concerning him, and also not to harden her chest against him... If he is the one more unjust, then let her come to him until she pleases him.”²⁴²

²³⁷ Sunan al-Tirmidhī 3087: Ḍa‘īf

²³⁸ Al-Muṣannaf of ‘Abd al-Razzāq 15914: Ḍa‘īf

²³⁹ Al-Muṣannaf of ibn Abī Shaybah 9802, 17409: Ḍa‘īf

²⁴⁰ Al-Muṣannaf of ibn Abī Shaybah 9802: Ḍa‘īf

²⁴¹ Musnad Abi Ya‘la 2455: Ḍa‘īf

²⁴² Al-Mustadrak of al-Ḥākim 14831: Ḍa‘īf

This is weak because ‘Aṭā’ al-Khurāsānī did not meet Yukhāmīr al-Saksakī at all and Shu‘ayb ibn Ruzayq al-Ṭā‘ifī is not a thiqaḥ.

As for the narration attributed to the Prophet ﷺ, “By the One in Whose Hand is the soul of Muḥammad ﷺ, a woman does not fulfill the right of her Lord until she fulfills the right of her husband.”²⁴³

This is weak, it has not come except from al-Qāsim ibn ‘Awf al-Shaybānī and he is weak.

And as for the narration about Abū Hurairah, attributed to the Prophet ﷺ, “If I were to order anyone to prostrate to other than Allah, I would have ordered the woman to prostrate to her husband.”²⁴⁴

This is weak because of the weakness of Muḥammad ibn ‘Amr²⁴⁵.

There are other ṭuruq to this narration from the Prophet ﷺ, the one from Qays ibn Sa‘d to the Prophet²⁴⁶.

This is weak because Sharīk al-Nakha‘ī is weak and also ‘Abd al-Raḥmān ibn Abī Bakr al-Nakha‘ī is majhūl and also his father.

As for the ṭarīq of this narration from Mu‘ādh ibn Jabal from the Prophet²⁴⁷.

This is weak because Abū Ḍabyān never met Mu‘ādh at all

And al-Qāsim ibn ‘Awf al-Shaybānī is not a thiqaḥ as clarified.

As for the ṭarīq of this narration from ‘Ā’isha from the Prophet²⁴⁸.

This is weak because ‘Alī ibn Zayd ibn Jud‘ān is weak.

As for the ṭarīq of this narration from Anas ibn Mālīk from the Prophet²⁴⁹.

²⁴³ Sunan ibn Mājah 1853: Ḍa‘īf

²⁴⁴ Sunan al-Tirmidhī 1159: Ḍa‘īf

²⁴⁵ Masā’il ibn Hānī’ 2330, 2320

²⁴⁶ Sunan Abī Dāwūd 2140 | Al-Sunan al-Kubra of al-Bayhaqī 14705: Ḍa‘īf

²⁴⁷ Musnad Aḥmad 21986, 19403: Ḍa‘īf

²⁴⁸ Musnad Aḥmad 24471: Ḍa‘īf

²⁴⁹ Musnad Aḥmad 12614: Ḍa‘īf

This is weak because Ḥafṣ ibn ‘Ubaydullah ibn Anas ibn Mālīk is not a thiqah.

As for what Bushayr ibn Yasār narrated from al-Ḥuṣayn ibn Miḥṣan, that an aunt of his (of Ḥuṣayn ibn Miḥṣan) came to the Prophet ﷺ for a need. When she had finished her need, the Prophet ﷺ said to her: “Do you have a husband?” She said: “Yes.” He said: “How are you with him?” She said: “I do not fall short toward him except in what I am unable.” He said: “Then look to how you are with him, for indeed he is your Paradise and your Hellfire.”²⁵⁰

This is weak because al-Ḥuṣayn ibn Miḥṣan is not a companion.

As for the obligation upon a woman on being grateful towards the husband, Ibn ‘Abbās narrated that the Prophet ﷺ said, “I was shown the Fire, and I saw that most of its inhabitants were women; they are ungrateful.” It was said: “Do they disbelieve in Allah?” He said: “They are ungrateful to their husbands and ungrateful for good treatment. If you were to do good to one of them for a lifetime, then she were to see something from you, she would say: ‘I have never seen any good from you at all.’”²⁵¹

Issue: Beating the Wife

Beating the wife if sin is feared from her can be in any manner, no matter how. Whoever claims specifies a miswak or anything else has spoken without any decisive evidence from the Qur‘ān and authentic Sunnah.

²⁵⁰ Musnad Aḥmad 27352, 19003: Ḍa‘īf

²⁵¹ Ṣaḥīḥ al-Bukhārī 29: Ṣaḥīḥ

Issue: Extending Hair, Plucking Hair, Grinding/Shaping the Teeth, Tattoos

It is prohibited for a woman to attach any hair to her hair at all, whether from her own hair, or the hair of another human being, or from the hair of an animal, or wool, or any other hair. This is from the major sins, except if she attaches something to her hair that is not hair, then that is allowed. And it is prohibited for her to grind/shape the teeth, by sharpening or shaping the teeth to make them thin and pointed, and it is prohibited for a woman to pluck her hair from her face, but she is allowed to shave or trim the hair. And it is prohibited for a woman to tattoo.

Asmā' bint Abī Bakr al-Ṣiddīq narrated, "A woman came to the Messenger of Allah ﷺ and said: 'O Messenger of Allah, I have a daughter who is a bride, but she fell ill and her hair fell out. Is there any sin upon me if I attach some hair for her?' The Messenger of Allah ﷺ said to her: 'Allah has cursed the one who attaches hair and the one who has it attached.'"²⁵²

Fāṭimah bint al-Mundhir is a *thiqah*²⁵³.

If what is attached is not hair, then the one attaching it is not a *wāṣilah* and the one whom it is attached to is not a *mustawṣilah*

‘Abdullāh ibn Mas‘ūd narrated, "The Messenger of Allah ﷺ cursed the women who tattoo and the women that get tattoos, and the women who their facial hair, and the women who grind/shape their for beauty."²⁵⁴

If she shaves instead of plucking then that is allowed, that is not in the language plucking. And the *mutanammiṣṣāt* in the language are women that pluck from the face specifically.

²⁵² Ṣaḥīḥ Muslim 2122, 115: Ṣaḥīḥ

²⁵³ Al-Iḥkām fī Uṣūl al-Aḥkām 3/82

²⁵⁴ Ṣaḥīḥ al-Bukhārī 4886: Ṣaḥīḥ

Nothing is called changing the creation of Allah except what texts have specified as changing the creation of Allah.

It has been narrated about the Prophet ﷺ that he ﷺ cursed the woman that performs skin peeling (exfoliation/dermabrasion), and the one on whom it is performed²⁵⁵.

This is weak as Āminah bint ‘Abdullah is majhūlah.

Issue: A Spouse Lying to The Other to Bring About Affection

There is no harm in one of the spouses lying to the other in what brings about affection, no matter how often, as Umm Kulthūm bint ‘Uqbah ibn Abī Mu‘ayṭ narrated that she heard the Messenger of Allah ﷺ say, “I do not count it as lying: a man who reconciles between people, speaking words seeking reconciliation; and a man who speaks words in war; and a man who speaks to his wife, and the woman who speaks to her husband.”²⁵⁶

Issue: It Is Not Permissible to Claim Falsely What one does not have

Asmā’ narrated, “A woman said: ‘O Messenger of Allah ﷺ! I have a co-wife, so is it sinful for me if I pretend that my husband has given me something which he has not given me (in order to provoke her)?’ The Messenger of Allah ﷺ said: ‘The one who pretends to have been given what he has not been given is like one who wears two garments of falsehood.’”²⁵⁷

²⁵⁵ Musnad Aḥmad 26128: Ḍa‘īf

²⁵⁶ Ṣaḥīḥ al-Bukhārī 2692: Ṣaḥīḥ

²⁵⁷ Ṣaḥīḥ al-Bukhārī 5219: Ṣaḥīḥ

Issue: Concealing During Intercourse is Obligatory

Concealing during intercourse is obligatory, as covering the ‘awrah is obligatory except for all others.

Issue: For a Man, Everything From His Menstruating Wife is Permissible Except Penetration

It is permissible for a man to enjoy everything from his menstruating wife except penetration only. This is a matter in which people have differed.

A group believes in the obligation of avoiding the wives that menstruate entirely in general, not approaching them at all.

They mention the verse, “They ask you concerning menstruation. Say: It is harm, so keep away from women during menstruation and do not approach them until they become pure.” [al-Baqarah: 222]

They also mention narrations attributed the Prophet ﷺ in which he avoided women entirely during their menstruation, the clarification about the weakness of those narrations has preceded in the Book of Ṭahārah. And likewise the clarification about the narrations in which the Prophet ﷺ avoided only from the women what is between her navel and knees during their menstruation.

Let not anyone be deceived by the narrations in which the Prophet ﷺ ordered his menstruating wives to wear an izār and then he would touch them, because an izār may reach the ankles, and it may reach the middle of the thighs.

So we will now show the decisive evidences that the place of menstruation which Allah ordered us to avoid is nothing other than the vagina only and that it is about nothing other than intercourse

Anas ibn Mālik narrated a ḥadīth, “Allah the Exalted revealed: ‘They ask you concerning menstruation. Say: It is harm, so keep away

from women during menstruation and do not approach them until they become pure.’ [al-Baqarah: 222] Then the Messenger of Allah ﷺ said: ‘Do everything except intercourse.’”²⁵⁸

his is a narration of the highest authenticity, and it is a clarification of the verse. He ﷺ clarified, right after its revelation, the intent of his Lord the Exalted within it.

So what we said is established that His saying, the Mighty and Majestic, “Fī al-Maḥīd (during menstruation),” [al-Baqarah: 222] is nothing but the place of menstruation. And that is what it also means in the language without doubt. And he ﷺ clarified the intent of his Lord the Exalted in the verse, and he did not abrogate it.

Allah the Mighty and Majestic said, “So that you may make clear to the people what has been sent down to them.” [al-Naḥl: 44]

And with Allah the Exalted is success.

Issue: The One Who Has Intercourse With a Menstruating Woman Intentionally

Whoever has intercourse with a menstruating woman intentionally has disobeyed Allah the Most High if done deliberately and he must give one dīnār or half a dīnār in ṣadaqah

The decisive evidence for this is the authentic narration from ibn ‘Abbās from the Prophet ﷺ that he ﷺ said about the one that has intercourse with the wife, “He must give ṣadaqah of one dīnār or half a dīnār.”²⁵⁹

This is the only authentic narration in this chapter, Miqṣam is a thiqaḥ, there is no valid jarḥ of him and ‘Abd al-Ḥamīd ibn ‘Abd al-Raḥmān is also a thiqaḥ. And making tarjīḥ between the musnad and mawqūf is a false method as clarified in the book about Uṣūl.

²⁵⁸ Ṣaḥīḥ Muslim 302: Ṣaḥīḥ

²⁵⁹ Sunan Abī Dāwud 264: Ṣaḥīḥ

And every other narration attributed to the Prophet ﷺ in this chapter is weak, the clarification of all of that has preceded in the Book of Ṭahārah.

Issue: When a Menstruating Woman Sees That She is Pure

If a menstruating woman sees that she has become pure, then if she only washes her private part, or only performs wudū', or only performs ghusl, then whichever of these she does, intercourse with her husband is permissible. Intercourse is not permissible if she does not do one of these three. But she does not pray until she has performed the ghusl with water.

Some said, "Intercourse is only permissible if prayer is permissible, so intercourse with her after her menstruation is only allowed if she performed ghusl from menstruation."

This is false, because intercourse is not connected to prayer. A woman can be junub and intercourse with her is permissible, and yet prayer is not allowed. And likewise a woman may be in i'tikāf in a state of ihrām, or fasting, and she prays but intercourse is not permissible.

As there is no guidance in any of this except in the verse, it is obligatory to return to it. Allah the Exalted says, "And do not approach them until they are pure; then, when they are purified, come to them as Allah has ordered you." [al-Baqarah: 222]

We find that Allah did not permit intercourse with a menstruating woman except if two matters occur, that when she becomes pure (taṭhur), by the ending of the menstruation and purifies herself (taṭahhur), because the pronoun in, "They are purified (taṭāhharna)" goes back, without any difference among those good in Arabic, to the pronoun in, "They are pure (yaṭhurna)," and the pronoun that is in, "They are pure (yaṭhurna)," goes to the menstruation. So the meaning, "They are pure (yaṭhurna)," is the cessation of menstruation

and the appearance of purity. As no action was added to them (the women). And the meaning, “They are purified (ṭaṭaḥḥarna)” is an action the women do, because the action is returned to her. So the āyah must be taken upon what it necessitates and generality. Nothing else is permissible, and it is not allowed to specify it, and it is not allowed to rely only on part of what the wording encompasses while omitting the remaining based by false claims, that is speaking about Allah’s intention that He did not tell Himself, and this is prohibited. We bear witness by Allah, Exalted is He, that if Allah had intended only a specific part of what is encompassed by the word, “They are purified (ṭaṭaḥḥarna),” without the remaining of what it encompasses, He would have informed us and clarified it, and He would not have left us to conjecture and speculation. Allah also says, “And He has explained for you in detail what He has forbidden you.” [al-An‘ām: 119]

Allah, Exalted is He, has clarified to us what is prohibited regarding intercourse with a menstruating woman, and that it is prohibited until she becomes pure.

It is then established that anything that falls under the word ‘ṭaṭaḥḥur’ after they are purified (yaṭḥurnā) then they are permissible. And wuḍū’ is a ‘ṭaṭaḥḥur’ without difference, and washing the private part with water is a wuḍū’, and washing the entire body (ghusl) is ‘ṭaṭaḥḥur.’ Whichever of these ways the woman gets purity after menstruation, intercourse with her is permissible.

And Allah, Exalted is He, grants success.

The Rulings on Wearing Silk and Gold

Issue: A Golden Ring and Gold For Men and Women

Gold is permissible for men and women, there is nothing authentic prohibiting it for anyone. But as for ring made from gold specifically, it is prohibited for men and women. And also intertwined gold bracelets, they are also prohibited for men and women.

As for the narration attributed to the Messenger of Allah ﷺ from Abū Mūsa, “Allāh allowed gold and silk for the women of my ummah and prohibited it for the men (of the ummah).”²⁶⁰

This is weak, Sa‘īd ibn Abī Hind al-Fazārī is a *thiqah*²⁶¹, but the narration is weak because Sa‘īd ibn Abī Hind did not meet Abū Mūsa al-Ash‘arī ever.

As for the narration from ‘Alī, “Indeed, the Prophet of Allah ﷺ took silk and placed it in his right hand, and he took gold and placed it in his left hand. Then he said: ‘Verily, these two are ḥarām for the males of my Ummah.’”²⁶²

This is weak because it has not come except from Abū Aflah al-Hamdānī and he is *majhūl*.

As for what ‘Amr ibn Shu‘ayb, from his father, from his grandfather, narrated, “A woman came to the Messenger of Allah ﷺ, and with her was her daughter on whose hands were two thick gold bangles. He ﷺ said to her: ‘Do you pay the zakāh on this?’ She said: ‘No.’ He ﷺ said: ‘Would it please you that Allah will make them into two bangles of fire for you on the Day of Resurrection?’”²⁶³

²⁶⁰ Al-Mujtaba 5265: Ṣaḥīḥ

²⁶¹ Al-Tamhīd 14/174 | Al-Muḥalla 15/611

²⁶² Sunan Abī Dāwud 4057: Ḍa‘īf

²⁶³ Sunan Abī Dāwud 1563: Ḍa‘īf

This is weak because the silsilah ‘Amr ibn Shu‘ayb —» his father —» his grandfather is a munqaṭi‘ah wijādah and there is nothing indicating that what ‘Amr ibn Shu‘ayb found in the book which he narrates in this silsilah, is what the grandfather, ‘Abdullah ibn ‘Abdullah ibn ‘Amr, wrote from the Prophet ﷺ.

As for what Narrated ‘Ā’isha narrated, “The Prophet ﷺ received some ornaments presented to him as a gift from al-Najāshī. Among them was a gold ring set with an Abyssinian stone. The Messenger of Allah ﷺ, turning away from it, took it with a stick or with one of his fingers. Then he called Umāmah, daughter of Abū al-‘Āṣ and granddaughter of his daughter Zaynab, and said: ‘Adorn yourself with this, my dear daughter.’”²⁶⁴

This is weak because of the weakness of Muḥammad ibn Ishāq.

As for the narration from al-Ḥasan, “The Messenger of Allah ﷺ said about women: ‘The two reds (gold and saffron) destroy them.’”²⁶⁵

This is weak because it is mursal, and no mursal is a ḥujjah and the one narrating from al-Ḥasan is unknown.

And what is narrated through al-Zuhrī, “The Messenger of Allah ﷺ saw two anklets of silver on ‘Ā’ishah coloured with gold. He ordered her to remove them and wear silver anklets and color them with saffron.”²⁶⁶

This is also weak as it is mursal.

And what is narrated from the sister of Ḥudhayfah, “The Messenger of Allah ﷺ addressed us women and said: ‘Do you not have silver to adorn yourselves? No woman wears gold and displays it except that she will be punished by it.’”²⁶⁷

This narration is from Rib‘ī’s wife, who is majhūlah.

And another narration from Asmā’ bint Yazīd ibn al-Sakan, “The Messenger of Allah ﷺ saw her wearing two gold bracelets and

²⁶⁴ Sunan Abī Dāwūd 4235: Ḍa‘īf

²⁶⁵ Al-Muṣannaf of ‘Abd al-Razzāq 19947, 11/72: Ḍa‘īf

²⁶⁶ Al-Muṣannaf of ‘Abd al-Razzāq 19944, 11/71 Ḍa‘īf

²⁶⁷ Al-Mujtaba 5137: Ḍa‘īf

rings, and said: ‘Do you like Allah to surround you with two bracelets of fire and rings of fire?’ She said: ‘No.’ He said: ‘Remove these two. Is it too difficult for you to wear two bracelets or rings of silver, then color them with perfume, or saffron?’”²⁶⁸

This is weak because Layth ibn Abī Sulaym and Shahr ibn Hawshab are weak and Maḥmūd ibn ‘Amr is majhūl.

As for what Abū Hurayrah narrated that the Messenger of Allah ﷺ said, “If anyone wishes to place a ring of fire on the one he loves, let him place a gold ring on them. If anyone wishes to place a necklace of fire on the one he loves, let him place a gold necklace on them. If anyone wishes to place a bracelet of fire on the one he loves, let him place a gold bracelet on them. But you should stick to silver and amuse yourselves with it.”²⁶⁹

This is weak because Asīd ibn Abī Asīd is weak.

As for what Mu‘āwiya ibn Abī Sufyān narrated, “The Messenger of Allah ﷺ forbade riding on the nāmār (a type of horse or saddle) and wearing gold except a little.”²⁷⁰

This is weak because Abū Qilābah never met Mu‘āwiya.

And another narration from Abū Hurayrah, “A woman came to the Prophet ﷺ wearing two gold bracelets. He said: ‘Two bracelets of fire?’ She asked about a gold necklace; he said: ‘A necklace of fire?’ About gold earrings; he said: ‘Two earrings of fire.’”²⁷¹

This is weak as Abū Zayd is unknown.

And they mention an authentic narration from ‘Ā’ishah that the Messenger of Allah ﷺ saw her wearing two gold rings. He ﷺ said to her: “Shall I inform you of what is better than this? If you remove these and wear two rings of silver, then color them with saffron, they will be two beautiful ones.”²⁷²

²⁶⁸ Musnad Ishāq ibn Rāhūyah 300: Ḍa‘īf

²⁶⁹ Sunan Abī Dāwud 4236: Ḍa‘īf

²⁷⁰ Sunan Abī Dāwud 4239: Ḍa‘īf

²⁷¹ Musnad Aḥmad 9677, 15/423

²⁷² Al-Mujtaba 5143: Ṣaḥīḥ

This narration is a ḥujjah for us, because there is not in it that the Messenger of Allah ﷺ prohibited her from wearing gold rings; instead there is only in it that he ﷺ chose something else for her without obliging.

And they mention a narration from Abū Hurayrah that the Messenger of Allah ﷺ said, “Whoever wants his forehead to be encircled by a ring of fire, let him wear a ring of gold. Whoever wants to encircle his forehead with a band of fire, let him use gold. Whoever wants to be adorned on his forehead with a bracelet of fire, let him use gold. But you should use silver, and play with it.”²⁷³

And a narration from Thawbān, that Messenger of Allah ﷺ, said, “The daughter of Hubayrah came to the Messenger of Allah ﷺ holding large rings in her hand. The Prophet ﷺ struck her hands, and she went to Fāṭimah to complain. Fāṭimah removed a gold necklace from her neck and said: ‘This was gifted to me by Abū Ḥasan.’ The Messenger of Allah ﷺ entered with the necklace in her hand and said: ‘Do you like it to be said about you: The daughter of the Messenger of Allah and in your hand is a necklace of fire?’ She then sent it to the market, sold it, and purchased a boy with its price, and freed him. The Prophet ﷺ was informed and said: ‘Praise be to Allah Who saved Fāṭimah from the Fire.’”²⁷⁴

The striking of Hubayrah’s daughter’s hands was not because the rings were gold, whoever adds this to the narration has lied without doubt and spoken without knowledge. And it also does not imply that the Prophet ﷺ prohibited her from wearing them or owning them. It is as much possible that it was because of showing from her hand or body what is not allowed to show and wear what is not allowed to wear, or for another reason known to the Prophet ﷺ. And as for his saying, “Do you like it to be said about you: ‘The daughter of the Messenger of Allah,’ while in your hand is a necklace of fire?” The apparent of the wording for which nothing else is understood is that he ﷺ only rejected

²⁷³ Sunan Abī Dāwud 4236: Ḍa‘īf

²⁷⁴ Al-Mujtaba 5140: Ṣaḥīḥ

her for holding it in her hand, there is not in the wording of the narration other than this, and nothing implies it, there is not in it that he prohibited her from wearing it or owning. If that would be the case, he would have removed her from holding it and not let her continue holding it. And it is possible that the Prophet ﷺ knew she had not paid its zakāh while it was obliging on it as Allah says, “And those who hoard gold and silver and spend it not in the way of Allah give them tidings of a painful punishment. On the Day it will be heated in the fire of Hell and their foreheads, their flanks, and their backs will be branded with it. This is what you hoarded for yourselves, so taste what you used to hoard.” al-Tawbah: 34-35] And Allāh knows best for what exact reason from the ones we mentioned he ﷺ rejected the necklace being in her hand, but what is certain is that he did not reject at all wearing it. There is instead in that narration the permissibility for her owning it because he allowed her selling it and allowed the one buying from her obtaining ownership of it. If wearing it would be prohibited or owning it, it would not be allowed for the one buying it. And he did not remove it from her wearing it. As for holding it in her hand which is in this narration a rejection of, it has been abrogated without doubt by the Prophet ﷺ obliging zakāh on it and him ﷺ allowing selling gold for gold if it is the same and the same weight. And him ﷺ allowing the sale of the golden necklace after removing the gems in it²⁷⁵ and the sale of gold by like for like. And he ﷺ did not prohibit selling the necklace in which there is gold and also not buying it and also did not order breaking it. And there is no difference that the obligation of zakāh on gold and the permissibility of selling gold like for like remains till the day of judgment, not abrogated. And as for the saying of the Prophet ﷺ when it reached him that Fāṭimah sold the golden necklace and by the price of a slave and then freed him, “All praise is for Allāh who saved Fāṭimah from the fire.” There is no doubt in that, and it is established from the Prophet ﷺ, “Then Allah frees a limb from the Fire for each of

²⁷⁵ Ṣaḥīḥ Muslim 1591, 89: Ṣaḥīḥ

his limbs, such that he frees his private parts in lieu of his private parts.”²⁷⁶ So we are certain that Allah saved her from the fire by her freeing a slave, whoever claims that she is only saved from the fire by selling the necklace has spoken what he has no knowledge of and that for which there is no evidence and no decisive evidence for its validity and that for which there is no trace in the narration except false assumptions. And even if none of this would be the case the ruling of the narration would only rule a golden necklace as prohibited, there is no text in it for the general prohibition of gold.

As for what is narrated by Umm Salamah, the wife of the Prophet ﷺ, said: “She (another woman) had made ornaments of gold around her neck. The Prophet ﷺ entered and turned away from her. I said, ‘Will you not look at her adornment?’ He said, ‘I turn away from your adornment.’”²⁷⁷

This is weak because ‘Aṭā’ never heard from Umm Salamah, and other ṭuruq are from Layth ibn Abī Sulaym, Maymūn Abū Ḥamzah and Khuṣayf and all of them are weak.

As for a golden ring specifically being prohibited for men and women, ‘Abd Allāh ibn ‘Abbās narrated, “The Messenger of Allah ﷺ saw a ring of gold on the hand of a man. He removed it and threw it aside, and said: ‘Does one of you take a burning coal from the Fire and place it in his hand!’”²⁷⁸

And as for the prohibition of intertwined gold bracelets ‘A’isha narrated, “The Prophet ﷺ saw in ‘A’isha’s hand two intertwined gold bracelets and said: ‘Throw them away and instead make two bracelets of silver and dye them with saffron.’”²⁷⁹

²⁷⁶ Ṣaḥīḥ Muslim 1509, 23: Ṣaḥīḥ

²⁷⁷ Musnad Aḥmad 26682: Ḍa‘īf

²⁷⁸ Ṣaḥīḥ Muslim 2090, 52: Ṣaḥīḥ

²⁷⁹ Al-Dalā’ il fī Gharīb al-Ḥadīth 636, 3/1151: Ṣaḥīḥ

Issue: Silk For Men and Women

Silk is prohibited except the size of four fingers, three or two, nothing else is permissible of silk for men. As for women it is permissible in general.

The decisive evidence is the authentic narration that has come from ‘Umar, “The Prophet ﷺ prohibited wearing silk, except for the place of two fingers, or three, or four.”²⁸⁰

And as for it being allowed for women, ‘Alī narrated, “A robe of *sīrā*’ (striped garment containing silk) was presented to the Messenger of Allah ﷺ, so he sent it to me. I wore it, and I noticed anger on his face. He then said: “I did not send it to you for you to wear it, I only sent it to you so that you can cut it into head-covers for the women.”²⁸¹

As for the narration of ‘Uqbah ibn ‘Āmir, “The Messenger of Allah ﷺ used to prohibit his family from jewelry and silk, saying: ‘If you love the adornment and silk of Paradise, do not wear them in this world.’”²⁸²

Hilyah in Arabic is every single thing that decorates, it is not specifically only gold, silver or silk. So as it is *mujmal* it is only about the decorations that have been prohibited by other authentic texts and wearing what is decorated is not prohibited by this text.

Issue: Adorning With Silver, Pearl, Ruby, and Emerald

Adorning with silver, pearl, ruby, and emerald is *ḥalāl* in every case for both men and women. We make no exception to this except silver vessels only, these are *ḥarām* upon both men and women, based on the

²⁸⁰ Ṣaḥīḥ Muslim 2069, 15: Ṣaḥīḥ

²⁸¹ Ṣaḥīḥ Muslim 2071, 17: Ṣaḥīḥ

²⁸² Al-Mujtaba 5136: Ṣaḥīḥ

report of al-Barā' ibn 'Āzib which we mentioned in the Kitab al-Ṣalāh. And Ṭahārah.

Allah says, "He created for you all that is in the earth." [al-Baqarah: 29]

And He, the Exalted, says, "And He has detailed to you what He has forbidden to you." [al-An'ām: 119]

As Allah did not detail by prohibiting adorning with silver in this, it is ḥalāl.

Some people have restricted permissibility to the adornment of the sword, the belt, the ring, and the muṣḥaf. There is nothing from the Qur'ān and Sunnah for this specification.

And also, Allah says about pearls, "And from each of them you eat fresh meat, and derive ornaments which you wear; and you see ships ploughing through them." [Fāṭir: 12]

Nothing comes out of the sea except pearls. So by wording of the Qur'ān, it is ḥalāl for both men and women, and even without this is it permissible. And success is from Allah, the Exalted.

Issue: Reconciliation of Quarrels Between Husband and Wife

When quarrel arises between a man and his wife, the ruler sends forth an arbiter from his family and an arbiter from her family, according to the state of oppressor from either of them. They then report to the ruler what they have discovered, so that he may take the right from the one upon whom it is due, and restrain the oppressor. They do not have the authority to separate the wife and husband, not by khul', and also not by any other means.

The decisive evidence for this is the saying of Allah, "And if you fear a breach between them, appoint an arbiter from his people and an arbiter from her people. If they desire reconciliation, Allah will cause it between them." [al-Nisā': 35]

The ahl (family) are relatives (qarābah) from the father and mother, and the ahl also are the mawālī, as we narrated in the ḥadīth of Abū Ṭaybah: “The Messenger of Allah ﷺ ordered his ahl to lighten his burden of tax.”²⁸³

And Allah said, “If they desire reconciliation, Allah will cause it between them.” [al-Nisā’: 35]

The pronoun in “between them” by necessity does not cease to either go back to the husband and wife as we say, or to the two arbiters. So the text of the verse is that Allah only causes reconciliation if they both intend reconciliation. And reconciliation is nothing but cutting off evil between the spouses.

If they mention the verse, “And if a woman fears ill-conduct or aversion from her husband, there is no sin upon them if they make terms of reconciliation between themselves, and reconciliation is best.” [al-Nisā’: 128]

And if they say, “This, meaning divorce, and it has been recited ‘an yuṣliḥā?’”

We say: Yes, and Allah only returned this reconciliation back to the choice of the spouses, not to others. And it is not known in the language, and also not in the Sharī‘ah, to say, “I reconciled between the spouses,” meaning, “I divorced her from him.”

There is nothing in the verse, and also not in anything of the Sunnah, that the arbiters have the right to separate, divorce or anything and also not any of it belongs to the ruler.

Allah said, “No soul earns (sin) except against itself.” [al-An‘ām:164]

So it is established that no one can pronounce divorce on behalf of another, and also not separate a man from his wife, except in the cases where the text has come obligating annulment (faskh) of marriage only. And there is no ḥujjah in the saying of anyone other than the Messenger of Allah ﷺ.

²⁸³ Ṣaḥīḥ al-Bukhārī 2210: Ṣaḥīḥ

The Rulings of Maintenance (Nafaqāt)

Issue: The Man Must Spend on His Wife From the Time Nikāḥ occurred.

A man is obliged to spend on his wife from the moment the Nikāḥ occurred, whether he has been called to consummate or not, whether she is rebellious or a sinner or not, whether she is wealthy or poor, whether she has a father or is an orphan, whether she is a virgin or previously married, free or a slave, and spending is all in accordance to what he is able to. The wealthy man (al-mūsir), the one of moderate means (al-mutawassit) and the one with limited means (al-muqill) all only do what they are able to.

The decisive evidence of this is what we mentioned before, from the saying of the Messenger of Allah ﷺ regarding women, “And it is upon you to provide for them their provision with what is ma‘rūf (good and known).”²⁸⁴

This establishes for them the right of maintenance from the time the Nikāḥ occurs.

A group said, “The woman gets no maintenance at all except when she is called to consummation.”

This is false, a saying not indicated by Qur’ān, and also not the Sunnah. And there is no doubt that if Allah intended to exclude the young girl or the rebellious or sinful wife, or the one not touched by the man, that he would not have neglected that, and leave it to be clarified by someone else. Far exalted is Allah above that.

If it is said, “Maintenance is in exchange for intercourse. So if she withholds intercourse, she is withheld maintenance.”

²⁸⁴ Ṣaḥīḥ Muslim 1218, 147: Ṣaḥīḥ

This is a mere false claim without any evidence. Maintenance and clothing are only in exchange for the state of the mere Nikāḥ, it became obliging from that moment. So when marriage exists, maintenance and clothing are both obligatory. What is most astonishing is them permitting the oppressing the rebellious or sinful wife by depriving her of her right, because of the reason of her oppression to the husband in which she withheld his right. This is pure injustice itself, and clear falsehood, mere false claims.

And what is even more astonishing is that the Ḥanafīs do not permit a person who has been wronged, when someone takes his wealth, to take recompense from any wealth of the wrongdoer if he is able. Yet they permit the prevention of maintenance and clothing from the rebellious or sinful wife without any evidence.

And a man must also clothe his wife according to his means. The wealthy is ordered to clothe her with silk brocade and similar. And the one of moderate means: with fine linen and cotton. And the one of limited means: according to his capacity. As the Messenger of Allah ﷺ said as mentioned just before, “They have their provision and their clothing with what is ma‘rūf (good and known).” And this corresponds to what is good and known among people regarding clothing and the same for food.

Anas ibn Mālīk narrated that he saw on Umm Kulthūm, the daughter of the Messenger of Allah ﷺ, a cloak of silk.”²⁸⁵

And Allah said, “Let the man of wealth spend from his wealth, and he whose provision is restricted – let him spend from what Allah has given him. Allah does not burden a soul except according to what He has given it.” [al-Ṭalāq: 7]

Abū al-Aḥwaṣ narrated from his father who said, “I said: ‘O Messenger of Allah ﷺ! A man passes by me but neither offers me hospitality and also does not entertain me. Then he passes by me again, shall I repay him in the same way?’ He ﷺ said: ‘No, rather host him.’”

²⁸⁵ Ṣaḥīḥ al-Bukhārī 5842: Ṣaḥīḥ

He said: ‘The Messenger of Allah ﷺ saw me wearing worn-out clothes and said: ‘Do you have any wealth?’ I said: ‘Allah has given me of every kind of wealth, from camels and sheep.’ He ﷺ said: ‘Then let it be seen upon you.’”²⁸⁶

There is in this narration that a person wears in accordance to his wealth and the ni‘mah of Allāh upon him.

Issue: It is Not Obligatory for the Husband to Spend on a Servant for His Wife

It is not obligatory for the husband to spend on a servant for his wife, even he is the son of a caliph and she is the daughter of a caliph. It is only obligatory upon him to provide for her edible food. And someone who will take care of all household work, such as sweeping and arranging bedding. And he must provide her with her clothing in the same way, because this is part of sustenance and clothing. No text has ever obligated the husband to pay for her servant, so to do so would be injustice and oppression. As for one who tasked her with kneading dough and cooking but did not require her to sew or make her own clothing, this is contradictory, and his error becomes evident, and with Allah, the Exalted, is success.

Issue: The Wife’s Maintenance is Obligatory Daily

Maintenance is obligatory upon the husband for her, daily, because it is her sustenance (rizq). If he transgresses this, delaying her food, he is admonished for that.

If he gives her more than the obligatory amount, and she dies, or he divorces her three times, or divorces her before touching her, or

²⁸⁶ Sunan al-Tirmidhī 2006: Ṣaḥīḥ

she completes her 'iddah with leftover days, lunch, or dinner, she must give it back to him. In the case of the deceased, it is taken from her wealth because it was not her right before, and placing it with her was only a temporal arrangement for the time that would come in which it becomes her right. And if that time does not come and he is obliged on her maintenance, then it is with her an amānah (trust). Allah, says, "Indeed, Allah commands you to render trusts to whom they are due." [An-Nisā': 58] There is no greater oppression than not demanding her to return what is not her right.

As for clothing, once it becomes obligatory, then it is her right. Once it becomes her right, she owns it, whether she dies afterward, or he divorces her three times, or she completes her 'iddah, or he divorces her before consummation: she is not obliged to return it, because if it would be obligatory on her to return it, she would not be owning it the moment it the time it became due, which is false.

And likewise if she wears out her clothes, or it is afflicted and it is not her property, then it is hers. And if the time comes in which it is accustomed that the like of it wears out, from such clothes then it is hers and he is demanded to get her others. If she wears out the clothes before the time in which it is accustomed that they will wear out, then he is not obliged anything, he is only obliged rizq and clothing in a good and known manner, and the good and known manner is as we mentioned.

As for bedding and covering (housing), it is different, because he is obliged to provide her lodging. As he must provide her lodging, it is obligatory for him to provide bedding and coverings sufficient to prevent harm from the ground for the one residing in it. This belongs to him, and he owns it because this is not called clothing. What clarifies this is the narration we mentioned before from the Messenger of Allah ﷺ, "You have rights over them that they must not let anyone you dislike (entering) tread on your bedding (furush)." ²⁸⁷

²⁸⁷ Ṣaḥīḥ Muslim 1218, 147: Ṣaḥīḥ

So the Prophet ﷺ attributed the bedding to the husband, and it is obligatory upon him to provide it; it belongs to the husband, not to her.

Whoever demands or obliges for the wife more than what is needed for a day has demanded oppression which Allah did not oblige. Whoever claims this is asked to bring any decisive evidence from the Qur‘ān and Sunnah. The only limit is what we mentioned.

‘Umar ibn al-Khaṭṭāb, “The Messenger of Allah ﷺ used to sell the palms of Banū al-Naḍīr and reserve the yearly provisions for their families.”²⁸⁸

And Ibn ‘Umar narrated, “The Messenger of Allah ﷺ used to give his wives every year eighty sa’ of dates and twenty sa’ of barley.”²⁸⁹

So it is permissible for him to give it to them daily or monthly. We do not prohibit this if he chooses that. If the ruler did that then it became corrupt without aggression from her or with aggression, then she is held liable, because she took what was not her right. The ruling of the ruler does not make anyone’s wealth permissible for another, and it does not nullify the right of the rightful owner. If he does it voluntarily without the judgment of a judge, and then it becomes corrupt without aggression from her, then he is obliged her maintenance again and clothing her again. Because she did not transgress anything and her right remains from before as he did not give it to her yet.

Issue: Housing the Wife According to His Ability

It is obligatory upon the husband to house her according to his ability, due to the saying of Allah ﷻ, “House them where you dwell according to your means.” [al-Ṭalāq: 6]

²⁸⁸ Ṣaḥīḥ al-Bukhārī 5357: Ṣaḥīḥ

²⁸⁹ Ṣaḥīḥ Muslim 1551, 2: Ṣaḥīḥ

Issue: The Husband is Not Obligated to Provide Jewelry or Perfume

He is not obliged to provide her with jewelry, perfume, cosmetics or adornments, because Allah ﷻ did not make them obligatory upon him, and also His Messenger ﷺ.

Issue: The Husband Withholds Maintenance and Clothing While Being Capable

Whoever withholds maintenance and clothing, while he is capable of providing them, whether he is absent or present, then it is a debt upon his liability. It is taken from him always, and judgment is passed for her regarding it during his life and after his death. It is taken from the capital of his wealth along with the creditors, because it is her right, and it is a debt upon him.

Issue: He is Able to Provide Part of the Maintenance and Clothing

Whoever is able to provide part of the maintenance and clothing, whether what he can provide is little or much, the obligation is to demand against him according to what he is able, and what he is unable is omitted from him. If he is not able to provide anything of that, then it is omitted from him, and it is not obligatory to demand against him for anything of that. If later he becomes wealthier, it is demanded against him from the time he becomes wealthier. He is not demanded for anything that she spent on herself from maintenance or clothing during his time of hardship.

This is because of the saying of Allah ﷻ, “Allah does not burden a soul except within its capacity.” [al-Baqarah: 286]

And His saying ﷻ, “Allah does not burden a soul except with what He has given it.” [al-Ṭalāq: 7]

So it is certain that what is not within his capacity, and what Allah ﷻ has not given him, Allah ﷻ has not burdened him with it. What Allah ﷻ has not burdened him with is not obligatory upon him, and what is not obligatory upon him, it is not permissible to demand against him for what he is not able at that moment, whether he becomes wealthy later or not.

This is different to what has already become obligatory upon him of maintenance or clothing, but he withheld them from her while he was capable, then this is always taken from him, whether he later becomes poor or not. Because Allah ﷻ had burdened him with it, so it is obligatory upon him, and his later poverty does not omit it from him. Instead, his poverty only necessitates that he is granted respite until ease, as Allah ﷻ said, “And if he is in hardship, then let there be postponement until ease.” [al-Baqarah: 280]

Issue: Avoiding the Husband Because He Withholds Maintenance, Clothing, or Dowry

If the husband withholds from her the maintenance, or the clothing, or the dowry, whether out of oppression or because he is poor and unable, it is not permissible for her to withhold herself from him, or avoid him because of that. Because even if he oppressed her, it is not permissible for her to withhold from him a right that he has over her or avoid him. She only takes her due from his wealth if she finds any of it to the extent of her right. And does not abstain from his rights or avoid him. As the Messenger of Allah ﷺ ordered Hind bint ‘Utbah when she said, “O Messenger of Allah, indeed Abū Sufyān is a stingy man; he does not give me what suffices me. May I take from his wealth without his knowledge?” So the Messenger of Allah ﷺ said to her, “Take what

suffices you and your child in a reasonable manner.”²⁹⁰ And sins do not omit obligations.

Issue: The Wife is Wealthy While the Husband is Poor

If the husband is unable to provide for himself, while his wife is wealthy, she is obliged to provide for him. And she does not reclaim from him anything of that if he later becomes wealthy except if he is a slave, then his maintenance is upon his master, not upon his wife. Likewise, if the free man has a child or a parent, then his maintenance is upon his child or his parent, unless both of them are poor.

The decisive evidence of this is the saying of Allah ﷻ, “And upon the father is their provision and clothing according to what is acceptable. No soul is charged except within its capacity. No mother shall be harmed through her child, nor father through his child. And upon the heir is the like thereof.” [al-Baqarah: 233]

The wife is an heir, so his maintenance is upon her, by the text of the Qur’ān. The maintenance of the wife is upon the slave just as it is upon the free man, because when Allah ﷻ obligated, through the tongue of His Messenger ﷺ, the maintenance and clothing of women upon their husbands, He did not distinguish between a free man and a slave.

And when Allah ﷻ said, “Give the women their mahr as a gift.” [al-Nisā’: 4]

He did not distinguish ﷻ between a free man and a slave, “And your Lord is never forgetful.” [Maryam: 64]

A group said, “If a man does not find what to spend on his wife, he is compelled to divorce her.”

They argue with what Abū Hurayrah narrated, “The Messenger of Allah ﷺ said: ‘The best charity is that which leaves sufficiency, and

²⁹⁰ Ṣaḥīḥ al-Bukhārī 5364: Ṣaḥīḥ

the upper hand is better than the lower hand. Your wife says: ‘Spend on me or divorce me.’”²⁹¹

This narration is not from the Prophet. The decisive evidence of is what Abū Hurayrah narrated, “The Messenger of Allah ﷺ said: ‘The best charity is that which leaves sufficiency, and the upper hand is better than the lower hand, and begin with those you support. The woman says: Either you feed me, or you divorce me.’” And he mentioned the remaining of the narration. They asked: ‘O Abū Hurayrah, did you hear this from the Messenger of Allah ﷺ?’ He said: ‘No, this is from Abū Hurayrah’s own pocket.’”

So arguing with this narration is false.

And if we wished to use false narrations then Jabir ibn Abd Allah narrated, “Abū Bakr and Umar entered upon the Messenger of Allah ﷺ and found him sitting, his wives around him, silent and downcast. Abū Bakr said: ‘O Messenger of Allah, if you had seen the daughter of Kharijah ask me for provision, I stood up to her and struck her neck!’ The Messenger of Allah ﷺ laughed and said: ‘They are around me as you see, asking me for provision.’ So Abū Bakr stood up to ‘A‘ishah, striking her neck, and ‘Umar to Ḥafṣah, striking her neck, each saying: ‘Do you ask the Messenger of Allah ﷺ for what he does not have?’ They said: ‘By Allah, we will never ask the Messenger of Allah ﷺ for anything he does not have. Then he ﷺ withdrew from them for a month.’”²⁹²

But as for us, we do not cling unto falsehood, this narration is not authentic from the Prophet, because Abū al-Zubayr did not say that he heard it from Jābir and it is known that Abū al-Zubayr has narrations from Jābir which he did not hear from him.

The decisive evidence of the correctness of our statement is the saying of Allah ﷻ, “Let the wealthy spend from his wealth, and he whose provision is restricted, let him spend from what Allah has given

²⁹¹ Ṣaḥīḥ al-Bukhārī 5355

²⁹² Ṣaḥīḥ Muslim 1478, 29: Ḍa‘īf

him. Allah does not charge a soul except with what He has given it.” [al-Ṭalāq: 7]

And He ﷻ said, “Allah does not burden a soul beyond its capacity.” [al-Baqarah: 286]

And with Allah ﷻ is success.

Issue: Spending on the Animal or Letting It Graze

And he is forced and obliged to provide for the upkeep of all animals, or to let it graze if it lives off pasture, even if he refuses, all of that must be done.

Al-Mughīrah ibn Shu‘bah wrote to Mu‘āwiyah saying, “The Prophet of Allah ﷺ prohibited gossip, excessive questioning, and wasting property.”²⁹³

Wasting property is prohibited, a sin, and an aggression without dispute. Preventing a person from using their animal to earn their livelihood, or failing to maintain it, is wasting property. So it is obligatory to prevent that, by the words of Allah, the Exalted, “And cooperate in righteousness and piety, but do not cooperate in sin and aggression.” [al-Mā'idah: 2]

And kindness to animals is an act of righteousness and piety. Whoever does not help maintain the animal has aided in sin and aggression and has disobeyed Allah, the Exalted.

Allah said, “And when he turns away, he strives throughout the land to cause corruption therein and destroy crops and livestock. And Allah does not like corruption.” [al-Baqarah: 205].

Preventing an animal from grazing, when it has no livelihood except through fodder or pasture, or neglecting to water fruit trees and crops until they perish, is corruption on earth and destruction of crops and livestock, by the texts words of Allah, the Exalted.

²⁹³ Ṣaḥīḥ al-Bukhārī 7292: Ṣaḥīḥ

If it is said, “You do not force anyone to plant their land if they do not wish to.”

We say: We leave them alone only if they have another source by which he can survive by which he is not in need of crops and this is without doubt beneficial for the land and preservation of its fertility.

But if they have no other means to support themselves, they are forced to cultivate their land if they are able, or contribute a portion of what it produces. We do not let them be a burden upon the Muslims by wasting their property and disobeying Allah, the Exalted. And with Allah, the Exalted, we seek help.

The Rulings of Nafaqāt (Spending)

Issue: Whom it is Obligatory to Spend on From Relatives

It is obligatory for every person, male or female, adult or non-adult, to begin with that for which there is no other way, and cannot be without, from expenses and clothing, according to their condition and wealth. After this, everyone is obliged and forced to spend on those who have no wealth and no means of earning for themselves, including their parents, grandparents, and grandmothers and those higher than them and on sons and daughters and their children and those lower than them, and on brothers, sisters, and spouses. All of them are equal in the obligation of spending upon them; no one is given priority over another. Whether what they have in their hand would be little or a lot after their death, they are treated equally. If a person has nothing left after covering his own expenses, no one from those mentioned is obliged to be to spend on. And if there is a surplus after spending on himself and those mentioned from. It is obligatory and forced to spend on their maḥram relatives and heirs, if those that we mentioned have

nothing with them, no wealth or means to support themselves. And they are the uncles, aunts and those above them, maternal uncles and aunts, and those above them, and nephews and nieces and those below them. And the heirs (mawrūthūn) are those who are not blocked by anyone from their inheritance if they die, whether from the ‘uṣbah or mawlā. If an heir is blocked from their inheritance by another inheritor, nothing is obligatory on him to spend on them. Whoever among those we have mentioned falls ill it is obligatory to take care of them. Of all these, whoever has the means to earn a living, no matter how less it is, then it is not obligatory on him to spend on them, except for parents, grandparents, grandmothers, and spouses. For them, it is obligatory to protect them from the insufficiency of earning, if a person is able to. It is obligatory upon him to sell from all that we have mentioned, his real estate, goods, and livestock, that which provides him a surplus beyond his own needs. But he is not obliged to sell anything from these if selling it would result in its destruction or loss. What is not subject to such risk is only sold when it is necessary to cover his own essential needs, if these needs cannot otherwise be met.

In this chapter much as been said and there is no decisive evidence from the Qur‘ān and authentic Sunnah of the Prophet except what we have said.

The decisive evidence for all we mentioned is the saying of Allāh, “And give the relative his due, and [also] the poor and the traveler.” [al-Isrā’: 26].

And Jābir narrated, “The Messenger of Allāh ﷺ said: ‘Begin with yourself, so give charity to yourself. If anything remains, then to your family; if anything remains from your family, then to your relatives; if anything remains from your relatives, then so on and so forth.’”²⁹⁴

²⁹⁴ Al-Sunan al-Kubra 2338, 3/56: Ṣaḥīḥ

So Allāh obliged a right for the relative (dhū al-qurbā), for the poor (al-masākīn), and for the traveler (ibn al-sabīl). And the Messenger of Allāh ﷺ made giving to the relatives obligatory.

If the opponent says, “His right is only maintaining kinship ties and leaving severing the ties.”

We say: Yes, this is his right. Maintaining kinship (al-ṣilah) means not leaving him to beg, or to die of hunger, cold, loss, or exposure to the sun, rain, wind, or cold. And this is from the surplus (faḍlah) of wealth he possesses, which he does not need for himself. There is nothing in severance ties more than leaving him as we mentioned.

If they say, “Allah has associated the relatives (dhū al-qurbā) with the poor (al-masākīn) and the traveler (ibn al-sabīl)?”

We say: Yes. And the right of the poor is upon anyone who is present with them to support them; it is obligatory and they are forced into that. And also the ḥākim enforces this obligation. And likewise, the right of the traveler is to be hosted and cared for.

If it is asked, “Who are these relatives (dhū al-qurbā)?”

We say: Everyone on the face of the earth who descends from Ādam and his wife, from son to son, and from generation to generation, down to the lowest-ranking human, including their mother. There must be a limit that clarifies who are the relatives for whom Allāh, Exalted, has made a right, apart from others.

So we find what Abū Hurayrah narrated, “The Messenger of Allāh ﷺ ordered charity. A man said: ‘O Messenger of Allāh, I have one dīnār.’ He said: ‘Give it in charity for yourself.’ He said: ‘I have another.’ He said: ‘Give it to your child.’ He said: ‘I have another.’ He said: ‘Give it to your wife (or spouse).’ He said: ‘I have another.’ He said: ‘Give it to your servant.’ He said: ‘I have another.’ He said: ‘You know best.’”²⁹⁵

²⁹⁵ Sunan Abī Dāwud 1691: Ṣaḥīḥ

This is also narrated about Abū Hurayrah, “The Messenger of Allāh ﷺ said: ‘Give in charity.’ A man said: ‘O Messenger of Allāh, I have one dīnār?’ He said: ‘Give it for yourself.’ He said: ‘I have another?’ He said: ‘Give it to your wife.’ He said: ‘I have another?’ He said: ‘Give it to your child.’ He said: ‘I have another?’ He said: ‘Give it to your servant.’ He said: ‘I have another?’ He said: ‘You are more knowledgeable.’”²⁹⁶

In these two narrations Sufyān and Yaḥyā differed; Sufyān placed the child before the wife, while al-Qaṭṭān placed the wife before the child. Both of them are thiqah. So what is obligatory is not to give precedence to the child over the wife, and also not the wife over the child; instead, they are equal. This is because it is authentically narrated in many cases that the Messenger of Allāh ﷺ would repeat what he says three times, so it is possible that his rulings are repeated here as well, once he gave precedence to the child, once to the spouse, making them equal. With his ﷺ statement to Hind bint ‘Utbah when she asked about taking from the wealth of her husband Abū Sufyān without his knowledge. The Prophet ﷺ said, “Take what suffices you and your child in a proper manner,”²⁹⁷ by that placing her and the child in an equal state.

Then we find what Ṭāriq ibn ‘Abdullāh al-Muḥāribī narrated, “We entered Madīnah and found the Messenger of Allāh ﷺ standing on the minbar, addressing the people: ‘O people, the hand of the giver is the highest. Begin with those whom you are responsible for: your mother, your father, your sister, and then your closest dependents.’”²⁹⁸

These are authentic narrations from thiqāt. So he ﷺ ordered to begin with those under one’s care, and they are the parents and siblings, so it is established with certainty that these are the ones to begin with along with the child and wife.

²⁹⁶ Al-Sunan al-Kubra 2327, 3/51: Ṣaḥīḥ

²⁹⁷ Ṣaḥīḥ al-Bukhārī 5364: Ṣaḥīḥ

²⁹⁸ Musnad ibn Abī Shaybah 822: Ṣaḥīḥ

And we previously clarified that every grandmother is a mother, every grandfather is a father, every son of a daughter or son is a son, and every daughter of a son or daughter is a daughter, all of these are sons and daughters, establishing by text what we said.

After these come the more distant relatives, and in this all *rahim* *maḥram* enter: uncle and aunt, maternal uncle and aunt, son of a sister and daughter of a sister, son of a brother and daughter of a brother with certainty.

Then we find the saying of Allāh, “And upon the mother is [the duty of] her provision and clothing in a fair manner; no soul is burdened beyond its capacity. No mother shall be harmed because of her child, nor a father because of his child; and upon the heir is [a duty] similar to that.” [al-Baqarah: 233]

From this, it is established that the obligation of spending (*nafaqah*) falls upon the heir along with the *maḥram* relatives, and those who are not *maḥram* relatives, and also not heirs exit from this ruling. And specifying them with this obligation, whether it is from or upon someone, follows the natural order of descent, from generation to generation back to Ādam and no generation has precedence over the one above it with a father. So it is not permissible to impose the obligation of taking wealth from the hand of its owner except by a text, and there is no text except regarding those we have mentioned. It is not permissible for anyone to give preference to one descendant over others not mentioned, without texts. If it would be general, it oblige spending on all descendants of Ādam, And all of the texts do not oblige any of this, the texts only oblige it on a specific part of it, as Allāh makes a difference between relatives and the poor, and the poor are with certainty among the descendants of Ādam.

So it is established that the obligatory right is only for certain relatives from the descendants of specific fathers and grandparents, and not for others, so it is established what we have said. And all praise is for Allah

Some people objected against the verse, “And upon the heir is [a duty] similar to that.” [al-Baqarah: 233]

They said, “This only means that he must not to be harmed.”

And they mention a weak narration from ibn ‘Abbās for it, and there is no ḥujjah in anyone other than the Prophet ﷺ, then how when the narration is either mursal which is weak or through a weak narrator who is Ash‘ath ibn Sawwār²⁹⁹.

This is all deception from the opponent; all of this is indeed a right, and this is what we say, because the saying of the one that says, “The heir need not be harmed,” is correct. There is nothing more in causing harm than the heir dying of hunger or cold, while he is wealthy without being given a morsel or anything to protect him from death by cold. This is the essence of harm without doubt.

As for the statement, “The suckling of the non-adult is from his share,” it is correct if he has an inheritance from wealth, and we do not oblige his maintenance on his heir except if he has no wealth at all.

And some have said, “A woman can entrust her child to her father if she is divorced or to his ‘aṣaba (male kin) if her husband is deceased, and her husband can prevent her from nursing her child from anyone else.”

All of this is false and opposes the Qur’ān. Allāh, Exalted, says, “Mothers shall breastfeed their children for two full years for whoever wishes to complete the nursing; and upon the child is [the duty of] providing for them and clothing them in a fair manner. No soul is burdened beyond its capacity. No mother shall be harmed because of her child, nor a child because of their mother; and upon the heir is [a duty] similar to that.” [al-Baqarah: 233].

So it is obligatory to force the mother, whether she likes it or dislikes it, to nurse her child for two full years, just as Allāh, Exalted, ordered, whether her husband likes it or dislikes it, and that she must not be harmed regarding her child, and there is no harm greater than

²⁹⁹ Al-Muṣannaf of ibn Abī Shaybah 19500: Ḍa‘īf

preventing her from nursing. It is not permissible for any woman, even if she is the daughter of the caliph, to do otherwise, except the divorced woman, if she and the father of the child have difficulty to agree on a wage, then he can accept the breasts of another women, so lets another nurse the child, in accordance with Allāh's words, "But if they breastfeed for you, then give them their due compensation and consult among yourselves in kindness. And if you are in difficulty, another [woman] may nurse for him—let the wealthy spend from his wealth; and whoever is able, let him spend from what Allāh has given him. Allāh does not burden any soul beyond what He has given it. After difficulty, Allāh will bring ease." [at-Talāq: 6–7]

And all of this is the word of Allāh, there is no listening or obedience to anyone who opposes Him.

If the heirs are many, it is not permissible for them to spend on the needy except from their own houses, not according to the share of their inheritance, because the text establishes equality among them in obliging this upon them; preferential treatment among them is not allowed.

Some asked, "Who is this heir? Is it the heir of the deceased father, or the one upon whom the nafaqa is obligatory?"

We say: This is unjust and burdensome, and the asker is sinful, because there is no mention of the parent upon whom is spent in the verse, Allāh only said, "No mother shall be harmed because of her child, nor a child because of their mother; and upon the heir is [a duty] similar to that." [al-Baqarah: 233].

So in "the heir (wārith)" [al-Baqarah: 233] there is a pronoun that requires with no other way a mawrūth and that is the wealth or right transferred from the muwarrith who is the deceased one, to the wārith who is the heir. And the pronoun returns to the for whom the ruling is, the one whose parents were prohibited from using him to harm. and that is the child, without any doubt. And there is no meaning for the difference of religions regarding blood relatives specifically. As

for inheritance, there is no inheritance in case of differing religions, because there is no text establishing that.

As for our statement that if every person mentioned above has the means of earning, even if it is very less, then it is not obligatory on a person to provide for them except for the parents, mothers, and wives only. For it is obligatory upon them to protect these individuals from need, by the words of Allāh, “When either of them reaches old age with you, do not say ‘uff’ to them nor rebuke them, but speak to them a noble word. And lower to them the wing of humility out of mercy, and say: ‘My Lord, have mercy upon them as they raised me when I was small.’” [al-Isrā’: 23–24]

It is authentically narrated from the Prophet that ‘uqūq to parents is among the major sins³⁰⁰, and there is no ‘uqūq greater than that a son, while being wealthy and well-off, leaves his father or grandfather to sweep latrines, tend to animals, clean filth, perform cupping, wash clothes for people, or stoke fires in the bathhouse and leaves his mother or grandmother to serve people and carry water in the streets. This person has with certainty not lowered for them the wing of humility out of mercy, without any doubt.

Allāh, Exalted, says, “And do good to parents, relatives, orphans, the needy, the near neighbor, the distant neighbor, the companion at your side, the traveler, and those whom your right hands possess.” [an-Nisā’: 36].

Allāh, Exalted, has established in all souls the differences of forms of beneficence (iḥsān) to those mentioned in this verse, and the texts have come clarifying that. Beneficence (iḥsān) toward the parents includes: patience with their harshness, respect for them, honoring them, Allāh, Exalted, says, “Be grateful to Me and to your parents; to Me is the final destination.” [Luqmān: 14]

And Allah says, “And if they strive to make you associate with Me that of which you have no knowledge, do not obey them; but

³⁰⁰ Ṣaḥīḥ al-Bukhārī 6870: Ṣaḥīḥ

accompany them in the world with appropriate kindness.” [Luqmān: 15].

So even if they order associating partners with Allāh, it remains obligatory to treat them with kindness, and this necessitates everything we have said.

And beneficence (iḥsān) toward relatives (dhū al-qurbā) is by preventing harm from them, honoring and protecting them, assisting them in their affairs, and not delivering them to any harm.

And beneficence toward the needy (al-masākīn) is by giving charity from surplus wealth until they are satisfied and clothing them, providing them with a place to dwell, and someone to take care of the sick ones among them.

And beneficence toward orphans is by showing mercy to them, teaching them, and taking care of them so that they do not go astray.

And beneficence toward neighbors is by preventing harm to them, performing acts of kindness, meeting them with joy, honoring them, and protecting them from injustice. Similarly, beneficence toward companions nearby is in the same manner.

And beneficence toward what our slaves is by feeding them from what we eat, clothing them from what we wear, all in a proper manner; not imposing on them what they cannot bear, not exhausting them for other than an obligation, and not striking for other than a right. All of this is obligatory, and whoever neglects it disobeys Allāh, Exalted.

As for the maintenance of the wife: this is because Allāh, Exalted, has made it obligatory upon the husband to provide for her, clothe her, house her, and care for her, even if she is wealthier than him. This necessitates providing for her in all services and actions, whether for him or for others.

As for anyone other than the wife, there is no obligation to provide sustenance, clothing, or housing, except if they do not have property or are not able to find the means.

If some provisions are fulfilled and others cannot be, it is obligatory for those mentioned above to cover only what was not fulfilled.

The obligations apply to the woman as they do to the man, except for the child's sustenance. As long as the father is capable, the woman bears no responsibility for that. This has been the practice of all Muslims, historically and currently. If the father is unable or has passed away, and the family lacks wealth, then their sustenance and clothing fall upon their mother, according to Allāh's words, "No mother should be harmed because of her child, nor a child because of his mother." [al-Baqarah: 233]

There is nothing more severe in harm than a wealthy person leaving the needy to beg at the doors, because the mentioned orders have come in one way and have not specified men only as being obligatory without women.

And Umm Salamah narrated, "O Messenger of Allah ﷺ, do I have a reward with regard to the children of Abū Salama if I spend on them, and I am not leaving them like this and like this (neglected), for indeed they are my children?" He ﷺ said: "Yes, you will have a reward for whatever you spend on them."³⁰¹

So this is Umm al-Mu'minīn informing that she spends on her children, not leaving them destitute, they are only her children, and the Prophet ﷺ did not deny that, and he ﷺ did he tell her it was not obligatory upon her. With Allāh, Exalted, is success.

It is not obligatory for the child to provide for his father's wife that is not his mother, as no Qur'ān and also no Sunnah oblige that. He is only obliged for providing his father's food, clothing, and the necessities of his service. With Allāh, Exalted, is success.

³⁰¹ Ṣaḥīḥ al-Bukhārī 5369: Ṣaḥīḥ

The Rulings of Faskh (Annulment of Marriage)

Issue: There is no Faskh (Annulment) of Marriage after its validity by the following

There is no Faskh (annulment) of marriage after its validity by leprosy, vitiligo, insanity similarly, and not by the occurrence of any of these defects in the wife, and also not by her finding any of them in him. And it is also not annulled by the inability to have intercourse, by a genital disease, and also not by any other defect. And also not by him not spending on her maintenance (nafaqah), or by not clothing her, or by not giving the mahr, or by the expiration of the four months in the case of ‘īlā’, or by marrying a female slave while married to a free woman, or by marrying a free woman while married to a female slave of a free woman to a female slave. And also not by zinā committed by any one of them, and also not by the man committing zinā with her maḥram women, such as her mother, grandmother, daughter, granddaughter, daughter of her daughter, daughter of her son, her sister, her maternal aunt, her paternal aunt, and also not if she commits zinā with his son. And also not when two judges want to separate them, and also not by him giving her the choice, whether she chose or did not choose herself. And also not by him saying to her, “You are ḥarām to me,” or, “You are to me like carrion, like swine, or like blood.” And also not by him gifting her to her family, whether they accept her or do not accept her, and also not by her leaving dar al-harb while not being a Muslimah. And also not by the sale of a female slave who has a husband, and also not by the sale of a male slave who has a wife. And also not if the husband disappears, because of not knowing where he is. None of what is mentioned annul the marriage, they remain married as they were,

there is nothing from the Qur‘ān and Sunnah indicating the annulment of any of these.

Issue: A Woman Whom a Man Marries Then She Has Insanity, Leprosy, or Vitiligo

This does not annul the marriage, there is nothing indicating it from the Qur‘ān and Sunnah.

Malik said, “The woman is returned (the marriage can be annulled) if she has insanity, leprosy, vitiligo, or a genital disease, if he married her without knowledge of this. If he consummates the marriage, she is entitled to the mahr, and the mahr is to be returned to her walī for having deceived him.”³⁰²

Some said, “It is not possible to fulfill the rights and obligations of the marriage if there is insanity, and no one can find satisfaction during intercourse with a woman who is leprous or has vitiligo; and he cannot have intercourse with a woman who has genital malformation, while he marries her for intercourse.”

We say: And the rights and obligations of the marriage cannot be fulfilled if there is sin, bad character, muteness, deafness, or having a weak ‘aql does the marriage then become annulled?

If they say, “He can repent from sin.”

We say: And it is possible to recover from insanity and other illnesses. As for being pleased with intercourse, then by Allah, no one is pleased with someone in whom there is even a small visible defect in the body from a trace of leprosy, a seizure once a month, with a woman who is a zāniyah, or with an old dark-skinned woman with disfigurement, or with someone with decay of flesh on her face, a large mole, a hump on the chest or back, or a deformed arm. This is something no one doubts. And all their claims are false. Marriage is as

³⁰² Al-Mudawwanah 2/142-145

Allah, Almighty, has ordered, then there is either maintaining it with good treatment or releasing with kindness, except when there is an authentic text which must not be transgressed. All these views are flawed. Marriage is as Allah, Almighty, has commanded, followed by either maintaining it with good treatment or releasing with kindness, except when there is an authentic text that must be followed.

Some of them mention a narration in which is mentioned, “Flee from the leper as you would flee from a lion.”³⁰³

We say: There is not in the order to flee the annulment of marriage. Then even if that would be the case, then annul the marriage years after its occurrence. And also, from where did they add vitiligo to this ruling and every other illnesses by which they annul the marriage?

Some said, “Safety from killing cannot be assured when with the insane.”

We say: This is with the sinner, without doubt, more fearsome. Then invalidate the marriage with the sinner, So their statement is entirely invalid.

If they attempt to deceive by mentioning the narration of Abū Mu‘āwiyah al-Ḍarīr —» Jamīl ibn Zayd al-Ṭā’ī —» Zayd ibn Ka‘b ibn ‘Ujrā that he said, “The Messenger of Allah ﷺ married a woman from Banu Ghifār. When she entered upon him and removed her outer garment, he saw whiteness on her thigh and said: ‘Wear your clothes and return to your people.’” Abū Mu‘āwiyah said, “A man narrated to us from Jamīl ibn Zayd from Zayd ibn Ka‘b ibn ‘Ujrā that the Prophet ﷺ ordered that she must be given the mahr.”³⁰⁴

This is from the narration of Jamīl ibn Zayd, who is entirely abandoned; and it is from Zayd ibn Ka‘b, who is majhūl, it is not known that Ka‘b ibn ‘Ujrā had a son whose name is Zayd. And then it is also mursal. And also, even if it would be authentic, it would not contradict

³⁰³ Ṣaḥīḥ al-Bukhārī 5707: Ṣaḥīḥ

³⁰⁴ Sunan Sa‘īd ibn Manṣūr 829: Ḍa‘īf

our view, because we do not prevent the husband from divorcing (talāq), before or after touching her if he wants.

Issue: The Marriage By Zinā of Him with her Female Maḥram or Her Zinā With His Son

None of this annuls the marriage as clarified before, there is nothing indicating it from the Qurʻān and Sunnah

Issue: The Wife or Husband is Lost

Whoever is missing, whether his location becomes known or remains unknown, whether he went missing in a war or outside of war, leaving behind a wife, a mother, a child, a slave, or wealth: the marriage of his wife is never annulled (mafsūkh) because of his absence. She remains his wife until his death is confirmed or she dies. The slave-girl who a mother of his child is not freed, his slave is not sold, and his wealth is not divided. His wealth is used instead for maintenance on her and those mentioned before. If he has no wealth, the slave is sold, and it is said to the wife and the slave girl who is mother of his child: “Look after yourselves.” If they have no earned wealth, they are supported from the share of the poor and needy from the ṣadaqāt, like other needy people without difference. There is no ḥujjah in anyone other than Allah the Exalted and His Messenger ﷺ, and it is not permissible to prohibit what Allah has permitted for the husband or to permit what Allah has prohibited him, without Qurʻān or Sunnah. No one has authority except the Messenger of Allah ﷺ. It is not permissible to annul anyone’s marriage due to the absence of the husband, and there is no obligation of ‘iddah for someone whose death is not confirmed, and no one can divorce on behalf of anyone.

Issue: That by Which the Annulment (Faskh) of Marriage Occurs After Its Validity

That by which the annulment of marriage occurs after its validity, they are eight only:

First: That she becomes prohibited for him because of suckling (raḍāʿ), and we have already mentioned this.

Second: That his father or his grandfather has intercourse with her, whether out of ignorance or deliberately intending fornication. We have already mentioned this.

Third: That liʿān between the wife and husband is completed, we will mention this by the will of Allah.

Fourth: That she is a slave woman and then she is emancipated, in which case she has the option to annul her marriage to her husband or to keep it, we will also mention this by the will of Allah.

Fifth: That they both differ in religion, except in one situation: if the husband accepts Islām while she is from the People of the Book (kitābiyyah), then their marriage remains valid as it was. Both of them differing in religion, in other than the case mentioned, is divided into five categories: The first is that he becomes Muslim while she is a kāfirah, not from the People of the Book. The second is that she becomes Muslimah while he is a kāfir, whether from the People of the Book or not. If both of them accept Islām together, their marriage remains valid as it was. The third is that he apostatizes (riddah) while she does not. That she apostatizes (riddah) while he does not. That they both apostatize together. In all of these situations, their marriage is annulled, whether he accepts Islām after her acceptance, or she accepts after him, or he returns to Islām, or she returns, or both return together. In all of this, she does not return to him except with their mutual consent, a new mahr, a walī and words of nikah by the walī. There is no obligatory from ʿiddah for any of these.

Sixth: That he acquires ownership of her, or part of her.

Seventh: That she acquires ownership of him, or part of him.

Eighth: His death or her death. There is no disagreement in this matter.

And we will if Allah wills, that which we have not yet mentioned: li'ān and the choice given to the emancipated woman

Issue: There is No 'Iddah in Any Faskh of Marriage Except in The Case of Death

There is no 'iddah in any of the forms of faskh we mentioned, except in the case of death and in the case of the slave woman who is emancipated and chooses separation from her husband. This is because the Messenger of Allah ﷺ ordered both of them the 'iddah, and he did not order anyone else with 'iddah. It is not permissible to impose 'iddah in other cases, as that is legislation without permission from Allah ﷻ. It is not permissible to make qiyās between annulment (faskh) and divorce (ṭalāq), because they are different. Ṭalāq only occurs by the husband's wording and his choice, while faskh occurs without the wording of the husband, whether he likes it or dislikes it. Then how when every single qiyās is false?

The text also came with this ruling, as Allah ﷻ said, "O you who have believed, when the believing women come to you as emigrants, test them. Allah is most knowing of their faith. And if you know them to be believers, then do not return them to the disbelievers; they are not lawful [wives] for them, nor are they lawful [husbands] for them... And there is no blame upon you to marry them when you have given them their due compensation." [al-Mumtaḥanah: 10]

So Allah ﷻ did not obligate upon them any 'iddah when their marriages with their disbelieving husbands are annulled by the Islām of the women. And with Allah ﷻ is success.

The Rulings of Li‘ān

Issue: The Description of Li‘ān

If a man accuses his wife of zinā (qadhf), whether that is by naming her that in general, or by naming a specific person, whether he had consummated the marriage with her or touched her or not, whether they are both slaves, or one of them a slave and the other free, or both Muslims, or he is a Muslim and she from the People of the Book, or both from the People of the Book, or one of them had the ḥadd applied on him for qadhf (accusing someone of zinā) or had the ḥadd applied on him for zinā, or both of them had it, or one or both of them are blind, or both are sinners, or whether he claims to have seen it or not, then in all cases it is obligatory upon the judge to gather them both in his place, whether she requests it or not, or whether he requests it or not. They have no choice in the matter. Then the judge asks him for evidence regarding what he accused her of. If he comes with upright witnesses in accordance with what we have mentioned in the testimony for fornication, then the ḥadd is applied upon her. But if he does not bring evidence, it is said to him, “Perform li‘ān?” Then he says, “By Allah, I am surely among the truthful (Billāhi Innī La Min al-Ṣādiqīn),” four times, repeating it. Then the judge orders someone to place his hand upon his mouth and says to him, “Indeed, the fifth testimony is binding,” if he refuses and wants to continue, then he must say as the fifth, “And upon me is the curse of Allah if I am among the liars.” When he completes this statement, the ḥadd for qadhf is omitted from him about his qadhf against her and what he accused her of is omitted. But if he continued it as mentioned, then it is said to her. Then she is told, “Perform li‘ān, otherwise the ḥadd of zinā will be applied to you.” Then she says, “By Allah, he is surely among the liars (Billāhi Innahu La Min al-Kādhībīn),” four times, repeating it. Then she says, “And upon me is the wrath of Allah if he is among the truthful (‘Alayya

Ghaḍabullahi in Kāna Lamin al-Ṣādiqīn).” The judge then orders someone to stop her when she is going to say it the fifth testimony and informs her that it obliges the wrath of Allah upon her. If she says it, then she is free of the ḥadd, their marriage is annulled, and she becomes permanently prohibited for him, never permissible for him at all, not after she marries someone else and also not before, even if he later declares himself a liar. But if he does declare himself a liar, then he is punished with the ḥadd for qadhḥ only. As for the case when he does not complete the li‘ān or she does not complete it, then they remain upon their marriage. If one of them dies before the completion of li‘ān, then they inherit from each other, and there is no meaning in the judge separating them or leaving them together. But only with the completion of li‘ān, separation occurs. If she is a non-adult or insane, then he must be punished with the ḥadd of qadhḥ, and there is no li‘ān in this case. If he is insane when he accused her, then there is no ḥadd and no li‘ān. Two mute persons do li‘ān what they are able to by gestures. If the woman against whom li‘ān is made is pregnant, then by the completion of li‘ān from both of them, the pregnancy is disassociated from him, it is not his child, whether he mentioned it or not, except if he specifically acknowledges it, in which case it is attributed to him, and there is no ḥadd applied against him for qadhḥ when he admits that the pregnancy is from him, if he performed li‘ān. If she confirms his statement regarding what he accused her of, and that the pregnancy is not from him, then the ḥadd is applied on her. Then the child is not negated from him and it remains his child. And if he did not do li‘ān of her till after she gave birth. Then he can do li‘ān to prevent the ḥadd from being applied on him. And as for what she gave birth to then it is not negated from him at all and is his child after that. If he divorced her and made qadhḥ of her in her ‘iddah he does li‘ān of her. If he makes qadhḥ of a woman that is ajnabiyyah, the ḥadd is applied on him of qadhḥ and there is no li‘ān. It does not harm him if he retains her and has intercourse with her after accusing her instead he can perform li‘ān whenever he wishes. And with Allah, Exalted is He, is all success.

As for our saying that every husband who accuses his wife zinā, then he performs li‘ān against her, as we mentioned in the description of li‘ān, it is because of the saying of Allah ﷻ, “And those who accuse their wives (of adultery) and have no witnesses except themselves, then the testimony of one of them is four testimonies (sworn) by Allah.” [al-Nūr: 6]

So Allah ﷻ did not specify a free man over a slave, or a blind over one who sees, or a righteous one over a sinner, or a kitābiyyah over a Muslimah, or a free woman over a slave-girl, sinning woman over a righteous one, or the man who has been punished with the ḥadd from one who was not, and also not a woman punished with the ḥadd from one who has not, “And your Lord is never forgetful.” [Maryam: 64]

And it has been narrated that al-Sha‘bī said, “The one whose testimony is not accepted does not perform li‘ān.”

This statement is corrupt, it is not from the Qur’ān and also not from the Sunnah. And while Allah ﷻ called it ‘testimony’ (shahādah), it is not from the other testimonies in which being upright (‘adl) is considered from sinner. Because in those testimonies the witness does not take an oath (yamīn) upon them, while the testimonies of li‘ān are oaths (yamīn). And the remaining testimonies are not accepted except with two witnesses in most cases, while the testimony of li‘ān is from only one person. And the other testimonies, in them it is not accepted for the one making the claim to be the testimony, while the testimony of li‘ān is for himself, in order to avert from himself the ḥadd, and to establish it against the woman. So li‘ān is invalidated from being under the same ruling as the other testimonies.

As for our saying that if he performs li‘ān the ḥadd is omitted from him, and otherwise the ḥadd is on her, it is because of the saying of the Messenger of Allah ﷺ in the ḥadīth of li‘ān, “The evidence, otherwise a ḥadd on your back.”³⁰⁵

³⁰⁵ Ṣaḥīḥ al-Bukhārī 2671: Ṣaḥīḥ

And our statement that if he accuses her of a specific man, then one ḥadd invalidates the li'ān, Anas ibn Mālik said, "The first li'ān in Islām was that Hilāl ibn Umayyah accused Sharīk ibn al-Saḥmā' of committing zinā with his wife. So he went to the Prophet ﷺ and informed him of that. The Prophet ﷺ said to him: 'Four witnesses, or a ḥadd on your back,' and he repeated this several times. Hilāl said: 'By Allah, O Messenger of Allah, Allah knows that I am truthful, and Allah will certainly reveal upon you that which clears my back from flogging.' So while they were in that state, the verse of li'ān was revealed. The Prophet ﷺ then called Hilāl, who testified four times by Allah that he was of the truthful, and on the fifth time that the curse of Allah be upon him if he were of the liars. Then the woman was called, and she testified four times by Allah that he was of the liars. When it came to the fourth or fifth, the Messenger of Allah ﷺ said: 'Stop her, for it is binding.' She hesitated until we thought she was about to confess, then she said: 'I will not disgrace my people for the rest of today,' and so she continued upon the oath. Then the Messenger of Allah ﷺ said: 'Watch her, for if she gives birth to a child who is white, straight-haired, with large eyes, then he is Hilāl ibn Umayyah's. But if she gives birth to a child who is dark-skinned, curly-haired, lean, and with thin shins, then he is Sharīk ibn al-Saḥmā's.' And she gave birth to a child who was dark-skinned, curly-haired, lean, and with thin shins. The Messenger of Allah ﷺ said: 'Were it not for what has already preceded in the Book of Allah, there would have been a matter between me and her.'"³⁰⁶

And the statement of Allah ﷻ, "And it will avert the punishment from her if she testifies four testimonies by Allah." [al-Nūr: 8]

There is in this an indication to a known punishment, because it is with the definite article (alif al-ta'rif and its lām), and no punishment is known for zinā except the ḥadd.

³⁰⁶ Ṣaḥīḥ Muslim 1493, 4: Ṣaḥīḥ

As for imprisonment which Abū Ḥanīfah and his companions oblige³⁰⁷, then no.

Ibn ‘Abbās narrated, “When the Prophet ﷺ ordered the two who perform li‘ān to do li‘ān, he ordered a man to place his hand upon his (the husband’s) mouth at the fifth (testimony) and said: ‘Indeed, it is binding.’”³⁰⁸

And there is no meaning in adding to the oaths in the li‘ān, that he must say: “Indeed, I am among the truthful in what I accused her of, from zinā,” and that she must say: “Indeed, he is among the liars in what he accused me of, from zinā.” Because Allah ﷻ has sufficed us, with what He ordered us in the Qur’ān, from burdening ourselves with this addition, “And your Lord is never forgetful.” [Maryam: 64]

And every ra‘ī that adds for us something in the religion which the order of Allah ﷻ has not brought, we turn away from that ra‘ī and cast it into the trash, because it is legislation in the religion that Allah ﷻ has not permitted.

If they say, “Perhaps he intends that he is among the truthful in his testimony of tawhīd, and she intends that he is among the liars in another matter.”

We say: Assume they intended that, then by Allah, they do not benefit from it. Because their oaths are upon what Allah ﷻ has ordered, and in the open declaration of one of them in it with falsehood, it obligates upon him the curse, and upon her the wrath, whether they intended what you mentioned or not. And such a thing cannot be disguised from the Knower of the unseen. The ruling applies to what they utter. And we are also not burdened with acting upon that if the ruling is associated with the action.

And ibn ‘Umar who narrated, “Indeed, the Messenger of Allah ﷺ separated between the two brothers of Banū al-‘Ajlān.”³⁰⁹

³⁰⁷ Al-Mabsūt 9/38-39

³⁰⁸ Al-Mujtaba 3472: Ṣaḥīḥ

³⁰⁹ Ṣaḥīḥ al-Bukhārī 5311: Ṣaḥīḥ

‘Umar narrated, “The Messenger of Allah ﷺ said to the two performing li‘ān: ‘Your reckoning is with Allah. One of you is lying. There is no way for you upon her.’”³¹⁰

So the separation made by the Messenger of Allah ﷺ suffices from the separation of every judge after him. And his statement ﷺ, “There is no way for you upon her,” prevents them from ever coming together ever again in marriage. And he ﷺ did not say that, as in the naṣṣ of the narration, except after the completion of the li‘ān of the two of them. So the separation of the two does not occur except at that point.

As for our saying that if she is a non-adult or insane, then the husband is punished with the ḥadd of qadhḥ, and there is no li‘ān in that case; because the non-adult and the insane cannot commit zinā at all, because zinā is an act of disobedience to Allah, and these two are not held accountable for sin. This is because of the saying of the Messenger of Allah ﷺ, “The pen has been lifted from three,”³¹¹ and he mentioned: the non-adult until he reaches maturity, and the insane until he regains sanity.

And if the ḥadd is obligatory where his lying is not certain, then to omit it from the one making qadhḥ when his lying is certain is false. And the ḥadd, by the naṣṣ of the Qur’ān, is obligatory upon everyone among us who accuses another of zinā.

As for the mute, Allah says, “Allah does not burden a soul except with what it can bear.” [al-Baqarah: 286] and it is not within his capacity, so it is not permissible to obligate him with it.

And the Messenger of Allah ﷺ said: “When I order you with something, then do of it what you are able.”³¹²

So it is established that everyone is obliged by what Allah ﷻ has ordered to the extent of his ability. And the mute is able to be understood by gesture, so it is upon him to bring it.

³¹⁰ Ṣaḥīḥ al-Bukhārī 5312: Ṣaḥīḥ

³¹¹ Sunan Abī Dāwūd 4398: Ṣaḥīḥ

³¹² Ṣaḥīḥ Muslim 1337, 412: Ṣaḥīḥ

Likewise, the one who does not know Arabic well performs li‘ān in his own language, with expressions by which he conveys what Allah ﷻ has prescribed.

As for our saying that with the completion of his li‘ān and her li‘ān, the child she is pregnant of is not his, except if he acknowledges it, and whether he mentions it or does not mention it, if he had already disavowed it before that, then: it is because of what ibn ‘Umar narrated, “Indeed, the Prophet ﷺ performed li‘ān between a man and his wife, so he negated from him her child. So he separated them, and attributed the child to the woman.”³¹³

And Sahl ibn Sa‘d mentioned ‘Uwaimir al-‘Ajlānī then the ḥadīth of li‘ān, and in it is, “She was pregnant, and the child was attributed to his mother.”³¹⁴

As for our saying that if he did not perform li‘ān with her until after she gave birth, then he performs li‘ān only to omit the ḥadd, and her child is not negated from him, it is his, because the Messenger of Allah ﷺ said, “The child belongs to the owner of the firāsh.”³¹⁵

So it is established that every child born upon his firāsh is his child, except where Allah ﷻ negates it upon the tongue of His Messenger ﷺ, or where it is known with certainty, without doubt, that it is not his child. And he ﷺ did not negate it except while she was pregnant and in that state li‘ān occurred only. So everything other than that remains under the attachment of lineage.

And that is why we say that if she confirms him that the pregnancy is not from him, then her confirmation is not considered and does not matter. Because Allah ﷻ says, “And no soul earns (a deed) except against itself.” [al-An‘ām: 164]

So it is obligatory that the acknowledgment of the two parents are discarded in negating the child, as there is in that earning against another. So only if there is a text validating that the child is not of the

³¹³ Al-Muwatta’ Riwayah Yahya 1643, 2/78: Ṣaḥīḥ

³¹⁴ Ṣaḥīḥ Muslim 1492, 2: Ṣaḥīḥ

³¹⁵ Ṣaḥīḥ al-Bukhārī 6750: Ṣaḥīḥ

father, then in that place specifically it is not from the father. And the texts have only negated the child from the father if both perform li‘ān. So, it is not negated outside of this situation.

As for when he does qadhf of her while she is in her ‘iddah from a revocable divorce (talaq raj‘ī), then he performs li‘ān whenever the matter is raised to the imām because he made qadhf of her while she was still his wife. And Allah ﷻ says, “And those who accuse their wives...” [al-Nūr: 6]

So what is only considered is the accusation, by the wording of the Qur’ān. If it is against a wife, then li‘ān is to be performed forever, since Allah ﷻ has not limited li‘ān to a specific time. But if the accusation was during the ‘iddah of the third ṭalāq, or while she was not his wife, and then he married her again, then the ḥadd must be applied, without doubt, and there is no li‘ān in that. Because he did not make qadhf of his wife, but a woman who was not his wife. So the ḥadd is applied only, by the wording of the Qur’ān.

As for our saying: That it does not harm him to keep her after having made qadhf the wife, or after acknowledging with certainty that she committed zinā, and he knows that, and it also does not harm him to have intercourse with her, it is because Allah did not mention that, and also not His Messenger ﷺ. So it is a corrupt condition, and shar‘ which Allah ﷻ has not permitted.

Issue Two Men Marry a Woman Out of Ignorance

If two men, out of ignorance, both married a woman during the same state of purity, or one of them purchased a slave-girl from the other and had intercourse with her, while the first had also had intercourse with her, and it was unknown which of them was first, and the dates of the two marriages or the two ownerships were not known, then she was found pregnant and gave birth to a child and both of them claim the child, then a lot is drawn between them. Whichever one the lot falls

upon, the child is attributed to him, whether the disputants are strangers, relatives, father and son, or free man and slave. If one of them is a Muslim and the other is a kāfir, the child is attributed to the Muslim without drawing lots. If both of them deny the child, or if they do not deny the child and also do not affirm him, then the child is attributed by qāfah (physical resemblance or bodily features), then if one or more reliable and knowledgeable persons testify that he is the son of one of them, then his lineage is attached to that man. But if they attach him to two or more, their statement is rejected and others are sought for the qāfah. It is not permissible for one child to be the son of two men, and also not the son of two women. Likewise, if two or more women dispute over a child: if he is in the custody of one of them, then he belongs to her. But if he is in all of their custody, or if none of them claim him or deny him, or if they each try to disclaim him, then the qāfah are called for him, just as mentioned.

The decisive evidence for this is what ‘Ā’ishah, Mother of the Believers, who said, “The Messenger of Allah ﷺ entered upon me in a state of joy, his face beaming with happiness, and said: ‘O ‘Ā’ishah! Did you not see that Mujazziz, (a qā’if, a physiognomist who attributes lineage by resemblance), just looked at Zayd ibn Ḥārithah and Usāmah ibn Zayd and said: ‘Indeed, these feet are from one another.’”³¹⁶

And from ‘Ā’ishah, “The Messenger of Allah ﷺ entered upon me one day in a joyful state and said: ‘O ‘Ā’ishah! Did you not see that Mujazziz al-Mudlijī (a qā’if, a physiognomist who attributes lineage by resemblance), came to me while Usāmah ibn Zayd was with me? He saw Usāmah ibn Zayd and Zayd together under a blanket, their heads covered but their feet exposed, and he said: ‘Indeed, these feet are from one another.’”³¹⁷

And from ‘Ā’ishah, “A qā’if entered while the Messenger of Allah ﷺ was present, and Usāmah ibn Zayd and Zayd ibn Ḥārithah

³¹⁶ Ṣaḥīḥ al-Bukhārī 6770: Ṣaḥīḥ

³¹⁷ Al-Mujtaba 3494: Ṣaḥīḥ

were lying down. He said: 'Indeed these feet are from one another.' The Prophet ﷺ was pleased with that and admired it."³¹⁸

Anas ibn Mālik narrated the ḥadīth of the 'Uraniyyīn and their killing of the shepherds and seizing the camels of the Prophet ﷺ. Then Anas said, "Messenger of Allah ﷺ sent out a group of qāfah in pursuit of them, and they brought them back."³¹⁹

So it is established that qiyāfah (lineage-tracing by physical resemblance) is a valid knowledge, and judgment in matters of lineage and traces must be based upon it.

And nothing departs from the ruling of qāfah except one matter only and that is two men or more claiming a child. If there is no evidence and it is not known to whom the firāsh belongs first, then the matter is to be decided between them by drawing lots, as we mentioned. Because of what Zayd ibn Arqam narrated, "Three men were brought to 'Alī while he was in Yemen. They had committed sexual intercourse with a woman during a single state of purity. He asked two of them: 'Do you acknowledge this child for this man?' They replied: 'No.' He continued asking all of them in pairs, and each time the two he asked replied: 'No.' He then cast a lot among them and attributed the child to the one upon whom the lot fell, and he imposed two-thirds of the blood-money (diyya) upon him. This was then mentioned to the Prophet ﷺ, and he laughed until his molar teeth became visible."³²⁰

He ﷺ does not have joy except with the truth and it is not possible for him ﷺ to hear falsehood then affirm it, and this narration is upright, all its narrators are thiqāt and the ḥujjah by it establishes.

If it is said, "This narration has iḍṭirāb in its isnād, Shu'bah narrated it as mursal from Salamah ibn Kuhayl —» al-Sha'bī —» an unknown person, and Abū Ishāq narrated it from a man of Ḥaḍramawt from Zayd ibn Arqam."

³¹⁸ Ṣaḥīḥ Muslim 1459, 40: Ṣaḥīḥ

³¹⁹ Sunan Abī Dāwud 4366: Ṣaḥīḥ

³²⁰ Sunan Abī Dāwud 2270: Ṣaḥīḥ

We say: So what? It has also been narrated in a connected manner by Sufyān, who is in no way less than Shu‘bah, from Ṣāliḥ ibn Ḥayy, who is a thiqah, from ‘Abd Khayr, who is a thiqah, from Zayd ibn Arqam.

And there is no ḥujjah in anyone other than the Messenger of Allah ﷺ, and what is established from him ﷺ invalidates the possibility of a child being from the semen of two fathers.

This is what ‘Abd Allāh ibn Mas‘ūd narrated, “The Messenger of Allah ﷺ said: ‘Indeed, the creation of one of you is gathered in his mother’s womb for forty days as a drop (nuṭfah), then he is a clot (‘alaqah) for a similar period, then he is a morsel of flesh (muḍghah) for a similar period. Then the angel is sent, and he breathes the spirit (rūḥ) into him.’”³²¹

So it is established with certainty that the reckoning begins from the moment the nuṭfah is occurs. And without doubt, the moment in which the first nuṭfah settles in the womb is not the same as the instant in which the semen of the second one who has intercourse settles. So if it would be permissible that the two fluids be combined and produce one child, then the reckoning (of the forty days) would be falsified. Because if the reckoning begins from the moment the first nuṭfah settles, then it belongs to the first alone. And if the second joins after him, then the reckoning would begin from the time the second semen settled, so there would with no other way be deficiency or addition within the forty days.

As for our statement that if a Muslim and a kāfir both claim a child, then he is attributed to the Muslim, because of the saying of Allah, “So set your face towards the religion, inclining solely to it, the natural disposition of Allah upon which He has created mankind. There is no altering the creation of Allah. That is the upright religion, but most people do not know.” [al-Rūm: 30]

³²¹ Ṣaḥīḥ Muslim 2643, 1: Ṣaḥīḥ

And what is established from the saying of the Messenger of Allah ﷺ: “Every newborn is born upon the fīṭrah.”³²²

And it has also been transmitted as: “upon the religion until his parents make him a Jew, or make him a Christian, or make him a Magian, or make him a polytheist.”³²³

So it is not permissible that to transfer him what he is born upon from the fīṭrah, except with certainty that the firāsh belonged to a kafir, without any doubt, and with Allah, exalted is He, is success.

The Rulings of Divorce (Ṭalāq)

Issue: Giving Her the Choice

If a man gives his wife the choice, and she chooses herself, or she chooses divorce, or she chooses her husband, or she chooses nothing at all, then in all of these cases there is nothing established from divorce. All of it is the same. Divorce does not take place through any of it, and does she not become prohibited for him, and ruling applies after any of it, even if he repeats giving her the choice many times, and even if she repeats choosing herself or divorce a thousand times. And the same is if he entrusts her with the matter of herself (tamlīk), or places the matter in her hand, there is no difference when saying any of that, none of it is a divorce.

The decisive evidence for this is that there is nothing from the Qur‘ān and Sunnah establishing the occurrence of divorce through any of it.

³²² Ṣaḥīḥ al-Bukhārī 1358: Ṣaḥīḥ

³²³ Ṣaḥīḥ Muslim 2658, 23: Ṣaḥīḥ

As for what Ḥammād ibn Zayd narrated, “I said to Ayyūb al-Sakhtiyānī: ‘Do you know anyone saying something about the statement, ‘Your affair is in your hand’ that it amounts to three divorces, other than al-Ḥasan’ He said: ‘No, by Allah’s forgiveness, except what Qatādah narrated to me from Kathīr Mawla of ibn Samurah, from Abū Salamah, from Abū Hurayrah, from the Prophet ﷺ, who said: ‘(That) is three (divorces).’” Ayyūb said, “I met Kathīr, the Mawla ibn Samurah, and asked him but he did not recognize it. So I returned to Qatādah and informed him, and he said: ‘He forgot.’”³²⁴

This is weak as Kathīr the Mawla of ibn Samurah, is majhūl al-ḥāl.

And those that argue that giving the wife the choice has is divorce say, “The Messenger of Allah ﷺ gave his wives the choice.”

We say: The verse very invalidates your claim, because its wording is, “If you desire the worldly life and its adornment, then come, I will provide for you and release you in a gracious release.” [al-Aḥzāb: 28]

So Allah only said that if they desired the world and not the Hereafter, then he ﷺ would divorce them at that point of his own choice and will, him wanting a ṭalāq, and there is not in it at all that they become divorced merely by them choosing the world. Whoever claims otherwise has distorted the speech of Allah and has inserted into the ruling of the āyah a pure lie for which there is no naṣṣ in the verse and also no dalīl.

And some of them mention fabricated narrations from Rabī‘ah, “One of the wives of the Prophet ﷺ chose herself, so it was a final irrevocable divorce (al-battah).”³²⁵

This is weak as ‘Abd al-Jabbār ibn ‘Umar al-Aylī is weak and it is mursal.

³²⁴ Al-Mujtaba 3410: Ḍa‘īf

³²⁵ Al-Mudawwanah of Saḥnūn 2/278: Ḍa‘īf

And this is narrated through the ṭarīq of Ibn Wahb, from ‘Abd al-Jabbār ibn ‘Umar, from al-Zuhrī, “The Prophet ﷺ, when he gave his wives the choice, one of them chose herself and left.”³²⁶

This is weak because ‘Abd al-Jabbār is weak and it is mursal.

And this is narrated through the ṭarīq of Ibn Wahb, from Ibn Luhay‘ah, from Yazīd ibn Abī Ḥabīb, from ‘Amr ibn Shu‘ayb, in a similar narration. He said, “And she was the daughter of al-Ḍaḥḥāk al-‘Āmirī.”³²⁷

This is weak as ibn Lahī‘ah is weak, and this is also mursal.

And the Prophet ﷺ never married the daughter of al-Ḍaḥḥāk al-‘Āmirī. What clarifies the falsehood of these disgraceful fabrications is the authentic narration narrated through multiple ṭuruq, from ‘Ā’ishah, she mentioned the revelation of the verse of choice, that the Messenger of Allah ﷺ recited it to her. She said: “I choose Allah, His Messenger, and the Hereafter, then the wives of the Prophet ﷺ all did as she had done.”³²⁸

And ‘Ā’ishah said, “The Messenger of Allah ﷺ gave us the choice, and we chose him, and he did not consider it a divorce.”³²⁹

It is established that there does not exist anything authentic regarding giving the choice being talaq except from three companions. And there is no ḥujjah in the saying of anyone other than the Messenger of Allah ﷺ.

Nothing has come in the Qur’ān or from the Messenger of Allah ﷺ that the statement of a man to his wife, “Your affair is in your hand (amruki bi Yadiki),” or, “I have given you authority over your affair (mallaktuki amruki),” or, “Choose (ikhtari),” obliges that she is divorced, or that she has the right to divorce herself, or that she can choose divorce. So it is not permissible that a private part which Allah the Exalted and His Messenger ﷺ made permissible for a man must be

³²⁶ Al-Mudawwanah of Saḥnūn 2/278: Ḍa‘īf

³²⁷ Al-Mudawwanah of Saḥnūn 2/278: Ḍa‘īf

³²⁸ Ṣaḥīḥ Muslim 1475, 22: Ṣaḥīḥ

³²⁹ Ṣaḥīḥ Muslim 1477, 28: Ṣaḥīḥ

prohibited by statements that Allah the Exalted and His Messenger ﷺ did not oblige. And this is utmost clarity, and all praise is for Allah.

Issue: The One That Says to His wife, “You Are Prohibited to Me”

Whoever says to his wife, “You are prohibited to me,” or adds to that by saying, ‘like maitah,’ “blood,” or “swine,” or anything similar, all of that is false and a lie and it is not a divorce. It does not make her prohibited to him, and she remains his wife as she was whether he intended divorce by this or did not intend it. Any saying other than what we mentioned are all statements for which there is no evidence in the text of the Qur’ān or the Sunnah, and there is no ḥujjah in anything other than them. Instead Allah says, “O Prophet, why do you forbid what Allah has made permissible for you?” [al-Tahrīm: 1]

So Allah the Exalted has rejected prohibiting what He made permissible, and the wife is among what Allah has made permissible; so prohibiting her is a munkar, and a munkar must be rejected. There is no ruling that it necessitates except seeking forgiveness and tawbah.

And Allah the Exalted says, “And do not say about what your tongues assert of untruth: ‘This is permissible and this is prohibited,’ to invent a lie against Allah.” [al-Naḥl: 116]

Whoever says to his wife, who is permissible for him by the judgment of Allah the Exalted, “She is prohibited to me,” has lied and fabricated, and it does not make her prohibited to him by his statement. Instead she is only prohibited in the manner that Allah the Exalted has made forbidden.

It is authentically narrated from the Messenger of Allah ﷺ that he said: “Whoever introduces into our matter that which is not from it, it is rejected.”

So prohibiting what is permissible is an innovation in Allah’s matter and must be rejected. There is no difference between the one

who says, “My wife is prohibited to me,” and the one who says, “Zayd’s wife is permissible for me.” And there is no difference between one who prohibits for himself the flesh of a ram and one who permits for himself the flesh of swine. It is established that the prohibition is invalid, and it necessitates and implies nothing, and the ruling regarding falsehood is only to nullify it, repent from it, and seek Allah’s guidance.

Similarly, his saying to her, “You are to me like carrion, blood, and pork,” or anything similar, is a lie. Instead she is permissible to him as water is permissible, and it does not make her prohibited by such a saying.

Issue: Whoever Says to His Wife, “I have given you as a gift to your family”

There is no decisive evidence from the Qur’ān and also not from the Sunnah that this binds a divorce. What is in this manner is not permissible to argue by. And it is false for a man to give as a gift a free woman or a slave girl other than himself. Such a gift is invalid, and there is no ruling for invalidity except to nullify it and to repent to Allah the Exalted for it. So what we have said is established.

Issue: If a Man Wants To Divorce a Wife

If a man wants to divorce a wife of him whom he has already had intercourse with or touched, it is not permissible for him to divorce her during her menstruation, and it is not permissible for him to divorce her in a state of purity (ṭuhr) in which he had intercourse with her. If he divorces her once or twice in a state of purity in which he had intercourse with her, or during her menstruation, then a divorce in these two states do not bind at all, and she remains his wife as before, except if he divorces her in these states a third time, or three divorces in one

combined pronouncement, then it becomes a binding divorce. But if he divorces her in a state of purity in which he had not had intercourse with her, then it is a binding divorce according to the Sunnah, it binds however it occurs, whether he wishes one pronouncement, or two combined, or three combined. If she is pregnant, whether from him or from someone else, then he can divorce her while she is pregnant, and it is binding, even if immediately after intercourse with her. And if he had never had intercourse with her at all, then he can divorce her in her state of purity or in her menstruation, if he wishes once, or twice, or three times. If she has never menstruated at all, or her menstruation has ceased, then he can also divorce her, just as we mentioned regarding the pregnant woman, whenever he wishes.

And in what we have mentioned, there is disagreement in three matters:

Does the divorce which is bid'ah, contrary to the order of Allah ﷻ take effect, or does it not take effect?

Is the issuing of three divorces at once bid'ah or not?

The description of ṭalāq al-sunnah (accordance with the Sunnah).

The decisive evidence of what we have said is the saying of Allah, "O you who believe, when you marry believing women and then divorce them before you have touched them, then you have no waiting period to count against them." [al-Aḥzāb: 49]

So Allah permitted the divorce of the one who has not been touched by intercourse, and He did not specify for her divorce any time or number. From this it is obligatory that this is her ruling, even if he entered upon her, and she stayed with him for a long time, and he did not touch her and she still became pregnant without having touched her. There is nothing binding as he did not touch her. And by that she does not become a muḥṣanah, because Allah did not make any exception from that, "And your Lord is never forgetful." [Maryam: 64]. And whoever differentiates between these rulings is

contradictory, inventing rulings in the religion what Allah has not permitted.

If it is said, “From where did you derive this ruling regarding women of the People of the Book when the male believers divorce them, while you invalidate every single *qiyās*?”

We say: From the saying of Allah, “And judge between them by what Allah has revealed.” [al-Mā'idah: 49]

And the saying of Allah, “And fight them until there is no more trial, and the religion is entirely for Allah” [al-Anfāl: 39].

And what is more specific than all of this in answering this question is His saying, “There is no blame upon you if you divorce women before you have touched them or specified for them a *Mahr*.” [al-Baqarah: 236]

So Allah made this general to all women and did not specify between a believing woman and a *kāfirah* woman. So this is His saying regarding the one who has not been touched.

As for the one who has been touched or had intercourse, then Allah said, “O Prophet, when you divorce women, divorce them for [the commencement of] their waiting period, and count the waiting period, and fear Allah, your Lord. Do not expel them from their houses, nor should they leave, except if they commit a clear immorality. And those are the limits set by Allah, and whoever transgresses the limits of Allah has wronged himself. You do not know — perhaps Allah will bring about after that a matter.” [al-Ṭalāq: 1]

And the waiting period (*'iddah*) does not happen from divorce except in the case of the one who has been touched. So Allah taught us how the divorce of the one who has been touched occurs, and He informed us that those are the limits of Allah, and that whoever transgresses them is unjust to himself. So it is established that whoever wrongs and transgresses the limits of Allah then his action is invalid

and rejected by the saying of the Prophet ﷺ, “Whoever does an action that is not in accordance with our matter, it is rejected.”³³⁰

So it is established that the divorce mentioned is only for the waiting period, as Allah ordered.

o we look at the clarification of the intent of Allah, in His saying: “Divorce them for [the commencement of] their waiting period.” [al-Ṭalāq: 1]

So we find what has been narrated from ‘Abd Allāh ibn ‘Umar said, “I divorced my wife during the time of the Messenger of Allah ﷺ while she was in a state of menstruation. ‘Umar mentioned that to the Messenger of Allah ﷺ, so he said: ‘Order him to take her back, then leave her until she becomes pure, then she menstruates again, then when she becomes pure, he may divorce her before having intercourse with her, or retain her. For that is the ‘Iddah which Allah has commanded that women be divorced in.’”³³¹

This is a clarification which it is not permissible to oppose. And this narration has also been narrated with deficiency from what we have mentioned. Among them is what is narrated from ibn ‘Umar, “I divorced my wife while she was menstruating. So ‘Umar went to the Prophet ﷺ and mentioned that to him, and the Prophet ﷺ said: ‘Order him to take her back, then when she becomes pure, if he wishes he may divorce her.’”³³²

And the ziyadah of the ‘adl must not be abandoned. And it is one narration, about the same story, about a single situation.

As for the divorce of a pregnant woman, it has been narrated by ibn ‘Umar, that he divorced his wife while she was menstruating. The Messenger of Allah ﷺ said, “Order him to return her, then let him divorce her while pure, or while pregnant.”³³³

³³⁰ Ṣaḥīḥ Muslim 1718: Ṣaḥīḥ

³³¹ Ṣaḥīḥ Muslim 1471, 2: Ṣaḥīḥ

³³² Ṣaḥīḥ Muslim 1471, 12: Ṣaḥīḥ

³³³ Ṣaḥīḥ Muslim 1471, 5: Ṣaḥīḥ

As for the one who has not menstruated, or whose menstruation has ceased, Allah has made divorce permissible in general for us, and He has clarified for us the divorce of the pregnant woman and the divorce of the menstruating woman. He did not specify a limit for us about the one who has not menstruated, and also not for the one whose menstruation has ceased. So it is obligatory that Allah has permitted divorcing her whenever the husband wishes. If there had been a ruling regarding the timing of her divorce, He would have made it clear to us.

Then people differed regarding divorce during menstruation: if a man divorces his wife while she is menstruating, or during a time of purity in which he has had intercourse with her, does that divorce take effect or not? Some who claim this that it is by *ijmā'*.

Whoever claims that is a liar, because there is disagreement. And even if disagreement about this had not reached us, it would still be false to claim *ijmā'* about it, as he cannot find a single word from anyone after the Prophet ﷺ allowing divorce during menstruation or during a purity in which the man has intercourse with her. And even if it would exist, then *ijmā'* is only what compels belief that it is from the Prophet ﷺ, whatever is not of this description is not *ijmā'* and is not from the religion.

We have mentioned the decisive evidences for the prohibition of divorce in those two states.

They deceive by mentioning and a narration through Sālim, from his father, he mentioned that he divorced his wife while she was menstruating, and he said at the end, “He reconciled with her, and the divorce that he had given her was counted for her.”³³⁴

This is not a *ḥujjah*, as it is not from the Prophet ﷺ.

And in some of these narrations, there is the saying of Ibn ‘Umar: “And what would prevent me from counting it, even though I did wrong and acted foolishly (divorced during her menstruation)?”³³⁵

This is not a *ḥujjah*, as it is not from the Prophet ﷺ.

³³⁴ Ṣaḥīḥ Muslim 1471, 4: Ṣaḥīḥ

³³⁵ Al-Awsaṭ of ibn al-Mundhir 7618, 9/148

And what ibn Jurayj narrated, “We sent to Nafi‘ while he was dismounting in the Dār al-Nadwah, on his way to Madīnah and we were with ‘Atā’ asking: ‘Was the divorce of ‘Abd Allah ibn ‘Umar of his wife while she was menstruating, during the time of the Messenger of Allah ﷺ, counted?’ He said: ‘Yes.’”³³⁶

This is not a ḥujjah, as it is not an acknowledgment of the Prophet ﷺ.

Some of them mentioned a narration from Anas, who said, “The Messenger of Allah ﷺ said, ‘Whoever divorces during an innovation, we hold him accountable for his innovation.’”³³⁷

This is weak because it is from none of the thiqāt companions of Ḥammād ibn Zayd, it only comes through Ismā‘īl ibn Umayyah al-Dhāri‘. And if it is from the young Qurashī of Baṣrah, who is without doubt weak, then it is rejected; if from anyone else, he is majhūl. And it is from ‘Abd al-Bāqī ibn Qānī‘ who is weak, he is the one who narrates every falsehood. Then even if it would be authentic which is not the case, it would still not be a ḥujjah, because the meaning of his statement, “We hold him accountable for his innovation,” is as Allah said, “And every person We have bound to his fate [by a record].” [Al-Isrā’: 13] There is not in it that he is judged by validating his innovation, or permitting what is in the religion. And this is the apparent ruling, as they say, regarding someone who sells a prohibited sale, or marries in an innovation, and in other rulings, there is no difference.

And they mention a narration from ibn ‘Umar, that he divorced his wife while she was menstruating. ‘Umar asked the Messenger of Allah ﷺ about that. He said, “Order him to return her, then let him retain her until she becomes pure, then menstruates, then becomes pure again. Then if he wishes, he may keep her after that, or if he wishes, he

³³⁶ Al-Muṣannaf of ‘Abd al-Razzāq 10957, 6/309

³³⁷ Sunan al-Dāraquṭnī 3944, 5/37: Ḍa‘īf

may divorce her before touching her. That is the waiting period which Allah has ordered that women are divorced for. And that is once.”³³⁸

The last words in this narration that it is one is a wording that only ibn Abī Dhi‘b came with and we do not ascertain that it is from the words of the Prophet ﷺ, it is possible that it is from the sayings other than him ﷺ, and the sharā‘i are not taken by doubts.

Then even if it would be authentic with certainty, that it is from the words of the Prophet ﷺ, then its meaning would be, “It is one in which ibn ‘Umar was wrong in,” or, “It is one case that is obliging for every man that divorces.” And the apparent is that it is not from the words of the Prophet ﷺ, informing that ibn ‘Umar divorced once. We have mentioned before the authentic narration, that ibn Jurayj narrated, “Abū al-Zubayr informed me that he heard Ibn ‘Umar, and ‘Abd al-Raḥmān ibn Ayman, the freedman of ‘Urwah, asked him: ‘How do you see the case of a man who divorces his wife while she is menstruating?’ He said: ‘‘Abd Allāh ibn ‘Umar divorced his wife while she was menstruating during the time of the Prophet ﷺ. ‘Umar asked the Prophet ﷺ about it, and the Prophet ﷺ said: ‘Let him take her back.’ So he returned her, and he did not consider it anything (he did not count it as a valid divorce).’ Then he said: ‘When she becomes pure, let him divorce her or keep her.’ Ibn ‘Umar said: ‘And the Prophet ﷺ recited: ‘O you who believe, when you divorce women, then divorce them at their prescribed waiting period, at the beginning (qubul) of their waiting period.’” [al-Ṭalāq: 1]³³⁹

This is how the verse was recited, “Fī Qubul (At the beginning of their waiting period),” then this recitation was raised and Allāh revealed, “Li ‘Iddatihinna (for their waiting period).”

Some of them said, “The Prophet ﷺ ordered him to return her, and that is an evidence that it was a divorce in which the ‘iddah began, so it was a validated divorce.”

³³⁸ Aḥkām al-Qur‘ān 404: Ḍa‘īf

³³⁹ Al-Muṣannaf 10960, 6/309: Ṣaḥīḥ

We say: No because ibn ‘Umar without doubt when he divorced her while she was menstruating, he avoided her and distanced himself from her, then the Prophet ﷺ only ordered her to stop avoiding her and to return to her as he was with her before that.

Some of them said, “It is from precaution to oblige the divorce, as he might divorce her after that a second time and she stays with him and perhaps a third time.”

No, this is the opposite to piety and precaution, because you permit her private parts to an ajnabī without evidence. Piety is only not prohibiting a Muslim his wife whom it is certain from Allāh that He allowed her for him and prohibited her for other than him, except with a certainty. As for with conjectures and possibilities, then no.

If they say, “You oblige him divorce during menstruation, and with a woman in her purity while he had intercourse with, if it is a third divorce or three combined divorces, and for the woman whom he did not enter upon you oblige it in any case.”

We say: Yes, because the statement of Allah, “So divorce them for their prescribed period,” [At-Talāq: 1] there is no problem that Allāh only ordered with this the woman that is entered upon, with a talāq other than three. And in these two manners the Prophet ﷺ made it clear to ibn ‘Umar. And Allāh did not ever order with this the one that is not entered upon and also not the one that divorces three times or a third time gathered. And there is not upon the non-entered upon woman any ‘iddah of talāq, so it obliges that he divorces her as we clarified with the text of the Qur‘an and His saying, “You do not know; perhaps Allah will bring about after that a matter. And when they have reached their term, either retain them honorably or part with them honorably.” [At-Talāq: 1-2]. And this is not regarding three divorces.

Abdullah ibn ‘Umar narrated, “That he divorced one of his wives with a single pronouncement of divorce while she was menstruating. Allah's Messenger ﷺ ordered him to return to her and to retain her until she became purified. Then, when she menstruated a second time in his house, he should wait until she was purified from

that menstruation as well. If he then wished to divorce her, he should do so when she was purified, before having sexual intercourse with her; for this is the 'Iddah that Allah ordered for the divorce of women." Ibn 'Umar said, "If you have divorced your wife once or twice, then Allah's Messenger ﷺ ordered me to do as I described. But if you have divorced her three times, then she is prohibited for you until she marries another man, and in doing otherwise, you have disobeyed Allah regarding the divorce of your wife as He ordered."³⁴⁰

As for the disagreement about a triple divorce all at once, whether it is a bid'ah or not.

Some people claimed that it is a bid'ah, and then they differed

One group said, "It absolutely does not occur, because a bid'ah is rejected."

Another group said, "Instead, it must be referred to the ruling of one that is ordered to be the ruling of ṭalāq by that."

A group said, "No, it does occur as it is, and the one who divorces in this way must be disciplined accordingly."

Another group said, "It is not a bid'ah, but a sunnah and it is not disliked."

Those who argued that it invalidates argue with the words of Allah, "O Prophet, when you [divorce] women..." [At-Talāq: 1]

And the words of Allāh, "And divorced women shall wait concerning themselves for three menstrual periods, and it is not lawful for them to conceal what Allah has created in their wombs, if they believe in Allah and the Last Day. Their husbands have more right to take them back in that period." [Al-Baqarah: 228]

And the words of Allāh, "And when you divorce women and they have reached their term, either retain them honorably or release them honorably." [Al-Baqarah: 231].

So they say, "Then divorce does not occur except if it is in this description."

³⁴⁰ Ṣaḥīḥ Muslim 1471, 1: Ṣaḥīḥ

They also mention the verse, “Divorce is twice, then either hold them honorably or release them with kindness.” [Al-Baqarah: 229]

They say, “This verse means once after once,

They also mention what Bukayr ibn ‘Abdullah al-Ashajj narrated, “I heard Maḥmūd ibn Labīd say: ‘The Messenger of Allah ﷺ was informed about a man who divorced his wife three times all at once. He stood up angry and said: ‘Does he play with the Book of Allah while I am among you?’ Then a man stood up and said: ‘O Messenger of Allah, shall I not kill him?’”³⁴¹

This is weak as it is mursal and there is no ḥujjah in any mursal narration. Maḥmūd ibn Labīd has no Ṣuḥbah, and Makhramah did not hear from his father Bukayr ibn ‘Abdullah al-Ashajj.

As for the verses, they were only revealed regarding the one who divorces once or twice only.

Then we ask them about the one who divorced once, then reconciled, then divorced a second time, then reconciled again, then a third time, did he commit a bid‘ah?

Their statement is, “No, that is the Sunnah.”

So we ask them: Do you judge for him based on what is in the mentioned verses? Their saying is, “No.” So it is established that the intent of the mentioned verses is regarding the one who intends divorce with a ṭalāq that is raj‘ī. So them arguing by these verses for every ruling about three divorces is invalidated.

As for their claim about the verse, “Divorce is twice,” [al-Baqarah: 229], that its meaning is, “Once after once,” this is false.

Instead the verse is like the saying of Allāh, “We give her, her due twice,” [al-Aḥzāb: 31], meaning it is doubled together. And this verse is Allah teaching us what is less than three from divorces, and it is a ḥujjah for us against them, because those that oppose us do not differ that ṭalāq al-sunnah is to divorce once then he leaves her till she completes her ‘iddah according to the saying of a group of them, and

³⁴¹ Al-Mujtaba 3401: Ḍa‘īf

in another saying from them he divorces her every ṭuhr state once, and none of this is in the verse. And they do not believe that the one that divorces with two divorces in a row, in a connected speech is a ṭalāq of the Sunnah. So them clinging unto the verse, “Divorce is twice,” [al-Baqarah: 229] is invalid.

As for those that say, “Three divorces are one.”

They mention what is narrated by ibn ‘Abbās, who said, “The pronouncement of three divorces during the lifetime of Allah’s Messenger ﷺ, and during the time of Abū Bakr and the first two years of the caliphate of ‘Umar was counted as one divorce. But ‘Umar ibn al-Khaṭṭāb said: ‘Verily, the people have begun to hasten in a matter in which they were given a period of respite. So if we had imposed this upon them, and he imposed it upon them.’”³⁴²

And they mention what Ṭāwūs narrated, “Abū al-Ṣahbā’ said to Ibn ‘Abbās: ‘Do you not know that three divorces were considered as one during the time of the Messenger of Allah ﷺ, Abū Bakr, and the early period of ‘Umar’s rule?’ He said: ‘Yes.’”³⁴³

And they mention what ibn Jurayj narrated, “Some of the Banū Abī Rāfi‘, mawālī of the Messenger of Allah ﷺ, narrated from ‘Ikrimah from Ibn ‘Abbās that: ‘‘Abd Yazīd divorced Umm Rukānah and her sisters... The Messenger of Allah ﷺ said to him: ‘Take back your wife Umm Rukānah and her sisters.’ He said: ‘I have divorced her three times, O Messenger of Allah!’ He said: ‘I know. Take her back,’ and recited: ‘O Prophet, when you divorce women, divorce them for their ‘iddah.’” [al-Ṭalāq: 1]³⁴⁴

And there is nothing they argue by other than these, as for this narration, it is weak because it is from the unknown among the Banū Abī Rāfi‘, and there is no ḥujjah in the majhūl. There is no one from Banū Abī Rāfi‘ that can be a ḥujjah except ‘Ubaydullah, and the remaining are all unknown.

³⁴² Ṣaḥīḥ Muslim 1475, 15: Ṣaḥīḥ

³⁴³ Ṣaḥīḥ Muslim 1475, 16-17: Ṣaḥīḥ

³⁴⁴ Sunan Abī Dāwud 2196: Ḍa‘īf

As for the other narrations from ibn ‘Abbās, in which it is said that the three divorces were considered one and are referred back to a single divorce. There is not in any of these narrations that the Prophet ﷺ was the one that made it one returned it to one, and also not that the Prophet ﷺ knew about it and acknowledged it. There is no ḥujjah except in what is authentic that the Prophet ﷺ said, did or knew and then acknowledged and did not reject. Those that use this narration are implied by the saying of Abū Sa‘īd al-Khudrī, “We would give in zakāt al-fiṭr during the time of the Messenger of Allah ﷺ a sa‘ of such-and-such,” as for us, then no, and all praise is for Allāh.

As for those who said that it is a sin but while it is a sin the divorce still occurs, they distorted what is narrated from ‘Ubādah ibn al-Ṣāmit, “My grandfather divorced his wife a thousand times. My father went to the Messenger of Allah ﷺ and mentioned this to him. The Prophet ﷺ said to him: ‘Did your grandfather not fear Allah? Three are enough for him, and as for the nine hundred and seventy-seven, they are aggression and oppression. If Allah wills, He will punish him, and if He wills, He will forgive him.’”³⁴⁵

And some people narrated this also from Ṣadaqah ibn Abī ‘Imrān —» Ibrāhīm ibn ‘Ubaydullah ibn ‘Ubādah ibn al-Ṣāmit —» his father —» his grandfather, “Some of my forefathers divorced his wife, and his sons went to the Messenger of Allah ﷺ and said: ‘O Messenger of Allah, our father divorced our mother a thousand times. Does he have a way out?’ He said: ‘Your father did not fear Allah, so a way out is permitted with three divorces according to the Sunnah, but the nine hundred and seventy-seven are a sin upon him.’”³⁴⁶

These two are weak as Yaḥyā ibn al-‘Alā’ al-Bajalī who is Abū Salamah, he is weak. And ‘Ubaydullah ibn al-Walīd al-‘Ijlī is weak and also Ibrāhīm ibn ‘Ubaydullah ibn ‘Ubādah ibn al-Ṣāmit is weak. And there are unknown people. Then it is munkar because there does not exist in anything from the narrations at all that the father of ‘Ubādah

³⁴⁵ Al-Muṣannaf of ‘Abd al-Razzāq 11339, 6/393: Ḍa‘īf

³⁴⁶ Sunan al-Dāraquṭnī 3943, 5/36-37: Ḍa‘īf

met Islām, then how about is grandfather? This is impossible without doubt.

And it was narrated about ‘Abdullah ibn ‘Umar, “That he divorced his wife while she was menstruating, then intended to follow it with two additional divorces during the remaining clean periods. This reached the Messenger of Allah ﷺ, who said: ‘O Ibn ‘Umar, this is not how Allah has ordered you; you have deviated from the Sunnah.’ He also mentioned: ‘O Messenger of Allah, if I had divorced her three times, would I have been able to reconcile with her?’ He said: ‘No, it would have been clear, and it would have been disobedience.’”³⁴⁷

This is weak because of the weakness of ‘Aṭā’ ibn Abī Muslim.

And they mention what Anas narrated from the Messenger of Allah ﷺ, “Whoever divorces in a bid‘ah, We oblige him with his bid‘ah.”³⁴⁸

This is weak and the clarification for the weakness of this narration has preceded, because it is from none of the thiqāt companions of Ḥammād ibn Zayd, it only comes through Ismā‘īl ibn Umayyah al-Dhāri’. And if it is from the young Qurashī of Baṣrah, who is without doubt weak, then it is rejected; if from anyone else, he is majhūl. And it is from ‘Abd al-Bāqī ibn Qānī’ who is weak, he is the one who narrates every falsehood. Then even if it would be authentic which is not the case, it would still not be a ḥujjah, because the meaning of his statement, “We hold him accountable for his innovation,” is as Allah said, “And every person We have bound to his fate [by a record].” [Al-Isrā’: 13] There is not in it that he is judged by validating his innovation, or permitting what is in the religion. And this is the apparent ruling, as they say, regarding someone who sells a prohibited sale, or marries in an innovation, and in other rulings, there is no difference.

And this is everything they had in their hands.

³⁴⁷ Sunan al-Dāraquṭnī 3974, 5/56-57: Ḍa‘īf

³⁴⁸ Sunan al-Dāraquṭnī 3944, 5/37: Ḍa‘īf

Then, what remains are those upon the truth, those who say that issuing three divorces together is Sunnah and not bid'ah.

And the decisive evidence for that is the verse, "So if he divorces her, she is not permissible for him afterward until she marries a husband other than him." [al-Baqarah: 230]

This applies to three divorces whether together or separate, and it is not permissible to specify this verse to one state without another state without another evidence.

And the saying of Allāh, "O you who believe, when you marry believing women and then divorce them before you have touched them, then you have no 'iddah to reckon against them." [al-Aḥzāb: 49]

This is general, permitting three, two, or one divorce.

And His saying, "And for divorced women is provision in kindness." [al-Baqarah: 241]

He did not specify a woman divorced once from a woman divorced twice, or from a woman divorced thrice.

And we find what Sahl ibn Sa'd al-Sā'idī narrated about the ḥadīth of li'ān of 'Uwaymir al-'Ajlānī with his wife and at the end of it he said, "I would have lied about her, O Messenger of Allah, if I were to keep her!" Then he divorced her three times before the Messenger of Allah ﷺ ordered him to. Then he said, "And I was with the people in the presence of the Messenger of Allah ﷺ."³⁴⁹

If issuing three divorces together had been disobedience to Allah, the Messenger of Allah ﷺ would not have remained silent without clarifying that. So it is established with certainty that it is a permissible Sunnah.

And some of our companions said, "It does not cease from two possibilities, either he divorced her while she was still his wife, or he divorced her after she had already become prohibited to him and separation between them had become obligatory. If he divorced her while she was his wife, then this is not your statement, because your

³⁴⁹ Al-Muwatta' Riwāyah Yaḥya 1642, 2/77: Ṣaḥīḥ

position is that once li‘ān is completed, she becomes permanently separated from him forever. But if he divorced her while she was already an ajnabiyyah to him, then we are only talking about the one who divorces his wife, not about one who divorces a woman who is already an ajnabiyyah to him.”

So we say: He only divorced her while considering her to be his wife, no one has any doubt about this. So if that would be a sin, the Messenger of Allah ﷺ would have preceded you in raising this objection. Indeed, our only ḥujjah is entirely that the Prophet ﷺ did not reject the one who issues three divorces together combined to a woman he believed to be his wife, having no doubt that she was under his marriage bond only.

And if they say, “Not everything omitted in the narrations (maskūt), about which no mention is made, is a ḥujjah for its omission?”

We say: Yes, it is a binding ḥujjah except when there is clarification in another narration that was not mentioned in this one. In that case, the unmentioned (maskūt) in another narration is not a ḥujjah.

‘Ā’ishah narrated, “A man divorced his wife three times, then she married another man, who then divorced her. The Messenger of Allah ﷺ was asked: ‘Does she become permissible again for the first husband?’ He said: ‘No, not until he tastes her sweetness (‘usaylatahā) as the first one tasted it.’”³⁵⁰

The Prophet ﷺ did not reject this question, and had it not been permissible, he would have said it.

And the well-known narration of Fāṭimah bint Qays, “That her husband, ibn Ḥaṣṣ ibn al-Mughīrah al-Makhzūmī, divorced her three times and then traveled to Yemen. Then Khālīd ibn al-Walīd went with a group of men and they came to the Messenger of Allah ﷺ in the house of Maymūnah, Mother of the Believers, and said: ‘Indeed, ibn Ḥaṣṣ divorced his wife three times. Does she have maintenance (nafaqah)?’

³⁵⁰ Ṣaḥīḥ al-Bukhārī 5261: Ṣaḥīḥ

The Messenger of Allah ﷺ said: ‘She has no maintenance, and upon her is the ‘iddah.’”³⁵¹

And Fāṭimah bint Qays said regarding the ḥadīth of her divorce, “I came to the Messenger of Allah ﷺ and he said: ‘How many times did he divorce you?’ I said: ‘Three times.’ He said: ‘He has spoken the truth, there is no maintenance for you.’”³⁵²

And from another narration Fāṭimah bint Qays said, “I said: ‘O Messenger of Allah, my husband divorced me three times, and I fear that he may intrude upon me.’ So he ordered her and she relocated.”³⁵³

And from another narration Fāṭimah bint Qays, from the Prophet ﷺ regarding the woman divorced three times, he said: “She has no housing and also no maintenance.”³⁵⁴

This then is a transmission of tawātur from Fāṭimah, that the Messenger of Allah ﷺ informed her and others besides her that her husband had divorced her three times.

And that the Prophet ﷺ ruled about the one divorced three times, and he did not reject this, and he did not say that it was not Sunnah. And this is sufficient for whoever sincerely seeks the truth for himself.

If it is said, “Al-Zuhrī narrated from Abū Salamah this narration, in which he said: ‘She mentioned that he divorced her with the final of three divorces.’”³⁵⁵ And al-Zuhrī narrated from ‘Ubayd Allāh ibn ‘Abd Allāh ibn ‘Utbah that her husband sent to her the remaining divorce that was left from his previous divorces, then he mentioned the narration, and in it: ‘Marwān sent Qabīṣah ibn Dhu’ayb to her, and she informed him, and he mentioned the remaining narration.’”³⁵⁶

³⁵¹ Ṣaḥīḥ Muslim 1480, 38: Ṣaḥīḥ

³⁵² Ṣaḥīḥ Muslim 1480, 48: Ṣaḥīḥ

³⁵³ Ṣaḥīḥ Muslim 1482, 53: Ṣaḥīḥ

³⁵⁴ Ṣaḥīḥ Muslim 1480, 44: Ṣaḥīḥ

³⁵⁵ Ṣaḥīḥ Muslim 1480, 40

³⁵⁶ Ṣaḥīḥ Muslim 1480, 41

We say: Yes, this is how al-Zuhrī narrated it. But his narration from the ṭarīq of ‘Ubayd Allāh is munqaṭi‘ah, because ‘Ubayd Allāh did not mention that about her, and also not from Qabīṣah about her. He only said, “Fāṭimah’s husband divorced her,” and that Marwān sent Qabīṣah to her, then she informed him.

As for his narration from Abū Salamah, it is connected. Except that in both narrations, there is nothing to indicate that the Messenger of Allah ﷺ was informed of this by her or by anyone else. The only authentic musnad narration is the one in which the Messenger of Allah ﷺ asked her about the number of her divorces, and she informed him, and it was upon that general statement that his ruling ﷺ had come.

Likewise, every wording in which the narration of Fāṭimah has been narrated, such as, “He finalized my divorce (abatta ṭalāqī),” or “He divorced her with an absolute divorce (tallaqahā al-battah),” or “He divorced her with a final divorce (ṭalāqan bātan),” or “A separating divorce (ṭalāqan bā’inan),” there is in none of these that the Messenger of Allah ﷺ himself had knowledge of such wording at all.

So all of that falls away, and what remains established is his ruling ﷺ upon what is authentically narrated: that her husband divorced her three times only.

As for our saying regarding the divorce of a pregnant woman, and the woman who has not been touched, and the woman who has not menstruated yet, and the one who has despaired of menstruation: the texts that we mentioned earlier only came regarding those whose waiting period (‘iddah) is according to periods of purity. As for the pregnant woman, she has no menstrual cycles (aqrā’) to be observed. And the Messenger of Allah ﷺ said, as we have mentioned earlier at the beginning of our discussion on divorce, “Then let him divorce her while she is pure or pregnant.”³⁵⁷ So the Prophet ﷺ clarified, about the woman in state of purity, and that is when her menstruation ends, that he must not have intercourse with her in that state of purity before

³⁵⁷ Ṣaḥīḥ Muslim 1471, 5: Ṣaḥīḥ

divorcing her. As for the case of the pregnant woman, the divorce was mentioned in general, and, “And your Lord is never forgetful.” [Maryam: 64]

As for the one who has not been touched, she has no waiting period (‘iddah) at all, by the texts of the Qur’ān. So, she is not among those regarding whom Allah the Exalted said, “So divorce them for their waiting period.” [al-Ṭalāq: 1] So, he can divorce her whenever he wishes, as Allah permitted, “There is no blame upon you if you divorce women before you have touched them.” [al-Baqarah: 236]

As for the one who has never menstruated at all, or whose menstruation has ceased, then those we mentioned said that he must divorce her at the sighting of the crescent moon. And this is not obligatory, there is nothing from the Qur’ān and Sunnah obliging it.

If they mention the verse, “And those women among you who have despaired of menstruation, if you doubt, then their waiting period is three months, and also for those who have not menstruated.” [al-Ṭalāq: 4]

We say: Yes. And it has been authentically narrated from the Messenger of Allah ﷺ that he said, “The month is twenty-nine days.”³⁵⁸ So from whenever she begins her waiting period, once twenty-nine days are completed, that counts as a month.

The decisive evidence for this is the saying of Allah, “And divorced women shall wait by themselves for three periods.” [al-Baqarah: 228]

So Allah has obligated what we have mentioned, that the counting of months may begin from any day or night that the one with ‘iddah, or from the point where the waiting period becomes obligatory by death, or by months. And with Allah, the Exalted, is success.

³⁵⁸ Ṣaḥīḥ al-Bukhārī 1907: Ṣaḥīḥ

Issue: He says, ‘You Are Divorced,’ And Intends Two or Three Divorces

Whoever says, ‘You are divorced,’ and intends two or three divorces, it counts according to what he intended, whether he said this and intended it for the copulated wife or non-copulated wife, it is as he intended it.

The decisive evidence for this is that we have already mentioned that three divorces together at once are Sunnah, and that the word ‘divorce (ṭalāq)’ occurs on that, on two and on one. So as that is the case, then it is upon what he intended from the number of divorces, according to the saying of the Prophet ﷺ, “Actions are only by intentions, and every person will have what he intended.”³⁵⁹ If he did not intend a number of divorces, then it counts as one, because that is the minimum number of divorces, which is the certainty that cannot be doubted, and it is not permissible to add divorces without certainty.

Issue: If He Repeats Divorce Thrice to The Touched Wife

If he says to a copulated wife, “You are divorced, you are divorced, you are divorced,” and he intended that the repetition he made of it applied only to the first words he uttered, then it counts as one. And the same is if he did not intend anything by the repetition. And if he intends by that each divorce uttered is another divorce, then it is three if he repeated it. And it is two if he repeated it twice without doubt. If he said to a non-copulated wife, “You are divorced, you are divorced, you are divorced,” it counts as only one divorce, because the repetition of divorce has already occurred while she is outside of ‘iddah from him. There is no ‘iddah for a non-copulated wife by the text of the Qur‘ān,

³⁵⁹ Ṣaḥīḥ al-Bukhārī 1: Ṣaḥīḥ

and she is an a ajnabiyyah after that and the divorce of an ajnabiyyah is invalid, so there is no meaning to a second and third.

As for those who makes a difference between his statement in one sitting and his statement in two sittings, this is a claim without any evidence. And likewise whoever makes a difference between his statement continuously and him separating his statement by silence, this is also a saying without any evidence, it is invalid.

So our saying is established, because with the completion of his statement to her, “You are divorced,” she becomes free and may marry another man. If he were to die, she would not inherit from him, and if she dies, he does not inherit from her. And she is not in ‘iddah from him. So his divorce to her is void and invalid. And Allah ﷻ is the Source of success.

Issue: Saying to the Non-Copulated Wife, “You are divorced three times.”

If he says to the wife that is not copulated by him, “You are divorced three times,” if he intended in his saying, “Divorced,” that it is three times, then it is three times. If he did not intend that but intended three times when he said, “Three,” Then it is not a divorce except once, because by the completion of his saying, “You are divorced,” she separates from him and then his saying, “Three,” has no meaning to it. And with Allāh is success.

Issue: The Divorce of a Woman in Nifās (Postpartum Bleeding) is Like Divorce During Menstruation

They are the same in everything. The divorce does not become binding except if it is three divorces at once, or if it is the final of three divorces after two have already preceded it.

The decisive evidence for this is that there is nothing except ḥayḍ or ṭuhr (purity). And we have mentioned from the Messenger of Allah ﷺ that, “He prohibited divorce during menstruation, and ordered divorce during a state of purity in which no intercourse had occurred, or if she was pregnant.”³⁶⁰

And there is no disagreement that the blood of nifās is not ṭuhr and also not pregnancy. So nothing remains except ḥayḍ, so it is ḥayḍ. No text has ever been authentically established stating that nifās is not ḥayḍ. There is instead no disagreement that it has the same rulings as ḥayḍ, such as abstaining from ṣalāh, fasting, and sexual intercourse.

It is also authentically narrated that the Messenger of Allah ﷺ said to Umm Salamah and ‘Ā’ishah, the Mothers of the Believers when each of them menstruated, “Anufisti (Have you entered nifās)?” She replied, “Yes.”³⁶¹ So the Messenger of Allah ﷺ called ḥayḍ ‘nifās’.

If a man divorces his wife in a state of ṭuhr (purity) in which he had not touched her, with a revocable divorce (ṭalāq raj’ī), and then she becomes pregnant through zinā, or by coercion, or by mistaken intercourse through ignorance, then she transfers to the ‘iddah of a pregnant woman. Her ‘iddah ends with the delivery of her pregnancy, because she remains his wife, inheriting from him and he from her. His ṭlā’ applies to her, his ṣihār applies to her, and he may do li‘ān with her if he makes qadhf of her. So she is a divorced woman who falls under those with pregnancy.

Allah said, “And those who are pregnant, their term is until they deliver their burden.” [al-Ṭalāq: 4]

Likewise, if he dies while she is in that state, she changes to the ‘iddah of passing away (‘iddah al-wafāh), whether she became pregnant in the first ṭuhr, the second, or the third.

But if the divorce was three, or the last of three, or she was a freed slave who chose separation from him, then she does not change to the ‘iddah of death, and also not to any other ‘iddah.

³⁶⁰ Ṣaḥīḥ Muslim 1471, 5: Ṣaḥīḥ

³⁶¹ Ṣaḥīḥ al-Bukhārī 294: Ṣaḥīḥ

But if she became pregnant in the first ṭuhr, then she has ‘iddah the entire duration of her pregnancy as one qur’, then counts her nifās (postpartum bleeding) as one ḥayḍ, then she must complete two more qurū’ afterwards. There is no difference between her counting that pregnancy as a qur’, even if nothing remained of it except the blink of an eye, and her counting it as a qur’ even if nothing had passed of it except the blink of an eye, because part of a ṭuhr is a ṭuhr.

If she became pregnant in the second ṭuhr, then she has ‘iddah the duration of her pregnancy as the second qur’, then counts her nifās as ḥayḍ, then she must complete a third qur’.

If she became pregnant in the third ṭuhr, then she has ‘iddah the duration of her pregnancy as a qur’, and when she delivers her pregnancy, with the very first blood that appears from her, her ‘iddah is completed and she becomes permissible for marriage, because the Qur’ān has obligated her to observe ‘iddah by qurū’, and that obligation does not fall from her.

If she is among those who do not menstruate, then her divorce is irrevocable (bā’in), as we mentioned. Or if she was a freed slave and chose separation, then she continues upon the ‘iddah of months, becoming permissible for marriage when it is completed, there is then no meaning to pregnancy.

Likewise, if she became pregnant after his death, she continues upon her ‘iddah of four months and ten nights, and becomes permissible for marriage when it is completed, pregnancy is then not considered.

And what we mean by saying, “she becomes permissible for marriage,” is that marriage becomes permissible for her, but as for intercourse, then absolutely not until she delivers her pregnancy and then attains purity from the blood of her nifās. And with Allah the Exalted is success.

Issue: After Divorcing Her Three Times as We Mentioned

Whoever divorces his wife three times, as we mentioned, it is not permissible for him to remarry except after another husband has intercourse with her in her vagina through a valid marriage, while both he and she are in sound ‘aql, there is no other way. It is not made permissible for her by intercourse in an invalid marriage, and also not by intercourse in a valid marriage while she is not in her senses, whether by unconsciousness, intoxication, or insanity, and also not if he is like that. And if some perception remains with him or with her in such states, or even in sleep, such that she can feel pleasure, then that intercourse permits her to the first husband, if that husband dies, and this must happen for her to be valid for the first husband before the second divorces her, or their marriage dissolves (with faskh) after being valid or if the second dies. And likewise if the marriage was valid but he has intercourse with her in a state when intercourse is prohibited such as during an obligatory fast, or during ihrām, or during i’tikāf, or while she is menstruating, none of that makes her permissible to the first husband. And a dhimmiyyah can do this by marrying a dhimmī.

The decisive evidence is the saying of Allah, “Then she is not permissible to him after that until she marries another husband. Then if he divorces her, there is no blame upon the two of them if they return to one another, if they think that they can uphold the limits of Allah.” [al-Baqarah: 230]

This verse is general for every husband, and he does not become a husband except by a valid marriage. As for the one who marries contrary to what Allah has ordered, then he is not a husband, and that is not a marriage. There is also in it the permissibility of him returning her after the divorce of the second husband.

And the matter of intercourse remains and the matter of the second husband’s death, and the faskh of his marriage, so we find what ‘Ā’ishah, Mother of the Believers narrated, “The Messenger of Allah ﷺ was asked about a man who divorced his wife (three times), then she

married another man who divorced her before having intercourse with her. Is she then permissible for her first husband? The Messenger of Allah ﷺ said: ‘She does not become permissible for the first until the other tastes her ‘usaylah (intercourse), and she tastes his ‘usaylah.’”³⁶²

There is in this narration a general addition, that she becomes only permissible to him by intercourse with that husband, not by any other manner. So death of that second husband and faskh after validity fall under this.

Issue: The Man that Divorced Her Thrice Wants Another to Have Intercourse With Her to Permit Her to Him Again

If a man that divorced his wife thrice wants someone to marry her and have intercourse with her to permit her to him by divorcing her afterwards, then that is allowed as long as no condition is made about that in the contract of the marriage of him to her. If he marries her, then he has the choice, if he wants he can divorce her and if he wants he can keep her and if he divorces her, she becomes permissible for the first. If he makes a condition in the marriage that he will divorce her after he had intercourse with her, then it is a false invalid condition and an invalid marriage and she does not with that become permissible to any. There is no difference between this and what we mentioned before about any invalid marriage

Some people said, “She does not become permissible except through a marriage of they desire in which it is not intended to make her permissible for the one that divorced her.”

They mention what ‘Abdullah ibn Mas‘ūd narrated, “The Messenger of Allah ﷺ cursed... And the one (the man) who marries to

³⁶² Sunan Abī Dāwud 2309: Ṣaḥīḥ

make permissible (the wife) and the one for whom it is made permissible (the previous husband).”³⁶³

There is nothing authentic in this chapter except for this narration. So the Prophet ﷺ cursed the man who marries to make permissible the wife for the previous husband and the man doing that is the muḥallil as the Prophet ﷺ said, and he ﷺ cursed the muḥallil lahu who is the previous husband wanting this.

People have differed about sinning muḥallil who is cursed and muḥallil lahu, who are they?

Everything the Prophet ﷺ said is true. Except that we and all of our opponents do not differ in that this wording from him ﷺ is not general for everyone who permits (muḥill) and for everyone for whom it is made permissible (muḥallal lahu). If that would be the case, and Allāh has protected us from that, then it would mean that everyone that gifts and everyone that is gifted something, and every seller and everyone that buys, every husband and every wife would be cursed, because all of them permit something that was prohibited. This is something about which there is no doubt. Because the words muḥallil and muḥallil lahu are general as they are about permitting anything.

So it is established that he ﷺ intended only some of those that permit (muḥallilīn) and some of those for whom it is permitted (muḥallal lahu). This is as clear as the sun, certain, and nothing else is possible.

So it is not permissible for a Muslim to attribute to him ﷺ that he intended a matter except with certainty from a naṣṣ leaving no doubt. Otherwise, it is lying upon the Messenger of Allāh ﷺ and attributing to him what he did not say, and narrating falsehood about him. So as all of this is certain, the one who permits that is cursed and the cursed one for whom it is permitted, they are only those who prohibit something that is permissible for others without a text.

³⁶³ Al-Mujtaba 3416: Ṣaḥīḥ

Then we look: Does this then encompass the one who marries a woman intending to make her permissible for her previous husband who divorced her three times, or does it not include him?

So we find that whoever marries a woman divorced three times, he, by having intercourse with her, makes her permissible, and the divorced husband is made permissible for her, whether he or anyone intended this or not.

So it is then invalid and false for him to be included in this threat, And even if this is made a condition but before the marriage contract, it is *laghw*; and the marriage contract itself is still valid, correct, and free from any defect if the marriage contract does not have at that moment the conditions, it is then as Allāh ordered.

As for his intention for that matter, what we have said suffices for that.

And the astonishing matter is that those who differ with us say regarding the one who marries a woman intending that he will only keep her for a month and then divorce her, yet he did not mention this in the marriage contract that it is a valid marriage and does not fall under the threat in the narration of the Prophet, and he is free to either divorce her or keep her. And that if he had mentioned that in the marriage contract itself, it would be invalid, and annul the marriage. So what difference is there between what they permit and what they prohibit? This is not a *qiyās* between one who marries and another; but all of it is one chapter, clarified by the saying of the Messenger of Allāh ﷺ, which we have mentioned, “My nation has been forgiven for what they say to themselves, so long as it does not come out in speech or action.”³⁶⁴

And especially as there is the established narration about him ﷺ regarding the woman whom Rifā‘ah al-Qurāzī divorced and ‘Abd al-Raḥmān ibn al-Zubayr married, in which he ﷺ said, “Do you wish to

³⁶⁴ Ṣaḥīḥ al-Bukhārī 6664: Ṣaḥīḥ

return to Rifā‘ah? No, until he tastes your sweetness and you taste his sweetness.”³⁶⁵

So the Messenger ﷺ did not make her intention to return to the one who divorced her three times a barrier to her returning if the second husband copulated her. So our statement is established, and their false saying remains free from any decisive evidence and a mere claim.

And it is established that the cursed one permitting (al-muḥallil al-mal‘ūn) is the one who marries her with being explicit that he only marries her to make her permissible for her previous husband and then divorces her, while they contract the marriage on this. Not if they are explicit in it without making it a condition in the marriage contract.

If they make it a condition it is prohibited and always annulled, because they stipulated a condition they obliged to fulfill, that is not in the Book of Allāh, while it is permissible in the book of Allah. And the Messenger ﷺ said, “Every condition that is not in the Book of Allāh is null and void.”³⁶⁶

And it is established that any marriage contract or others concluded on the condition that it is only valid if another invalid/false matter is valid, is false and invalid, we clarified this before entirely and in Allāh, Exalted, we seek aid.

If they mention the narration about Ibn ‘Abbās, “The Messenger of Allāh ﷺ was asked about the one who makes permissible (al-muḥallil), and he said, ‘No marriage except a marriage of desire; no marriage except a marriage of desire; no deceitful marriage (nikāḥ dulsah), and no one mocking the Book of Allāh, then they taste each other’s intimacy (‘usailah).’”³⁶⁷

This narration is fabricated, because Ishāq ibn Muḥammad al-Farwī is very weak. Then from Ibrāhīm ibn Ismā‘īl; and he is without doubt either ibn Mujammi‘ or ibn Abī Ḥabībah, both are weak, and their narrations are not relied upon.

³⁶⁵ Ṣaḥīḥ al-Bukhārī 2639: Ṣaḥīḥ

³⁶⁶ Ṣaḥīḥ al-Bukhārī 2155: Ṣaḥīḥ

³⁶⁷ Al-Mu‘jam al-Kabīr 11567, 11/227: Ḍa‘īf

And even if it would be authentic, the apparent wordings in the narration do not indicate anything against what we have said.

Also, regarding, “One mocking the Book of Allāh, Exalted,” none of them are mocking the Book of Allāh; all of them are obedient to it, acting upon it and refraining from opposing it. Then how when this narration is weak.

And they mention a narration about ‘Ā’ishah, about the matter of the wife of Rifā‘ah al-Qurāzī, whom he divorced three times, and her mentioning it to the Prophet ﷺ that he had with her nothing but a fringe of her garment. And his ﷺ saying, “Do you wish to return to Rifā‘ah? No, until you taste his ‘usailah and he tastes yours.”³⁶⁸

Then there is a narration from the ṭarīq of ‘Abd al-Razzāq —» ibn Jurayj —» ibn Shihāb —» ‘Urwah —» ‘Ā’ishah, “A woman came to the Prophet ﷺ and contracted a marriage, then came later and informed him that he had touched her. He prevented her from returning to her first husband, and said: ‘O Allāh, if it is only for making her permissible for Rifā‘ah, let her marriage not be completed a second time.’” Then she went to Abū Bakr and ‘Umar during their caliphate, and they prevented her.

The first one is authentic and is alone not a ḥujjah against us at all, and the second one is a narration that is not correctly mentioned, it does not exist with that isnād, it is not from ibn Shihāb but from ‘Aṭā’ al-Khurāsānī³⁶⁹ and he did not hear from ibn ‘Abbās and he is also weak so this narration falls away.

And even if it would be authentic then it is a decisive ḥujjah for us against them, because there is in it that the Messenger of Allāh ﷺ did not annul her marriage to ‘Abd al-Raḥmān even while estimating that he intended only to make her permissible for Rifā‘ah. But when she denied that ‘Abd al-Raḥmān had copulated her, and then when she learned that she would not be permissible to him except after ‘Abd al-Raḥmān had copulated her, she retracted that denial and she

³⁶⁸ Ṣaḥīḥ Muslim 1433: Ṣaḥīḥ

³⁶⁹ Al-Muṣannaf of ‘Abd al-Razzāq 11133, 6/347: Ḍa‘īf

acknowledged that he had indeed copulated with her. His ﷺ statement, “If it is only for making her permissible for Rifā‘ah, her marriage will not be completed a second time,” this is only without doubt that for Rifā‘ah it does not become completed a second time. And they forgot themselves with this narration as there is not in it that the second husband in this narrations wanted her to return to the previous husband. There is only in this narration that she must not be believed if she denies that the second husband touched her, then learns that she is not permissible to him except by intercourse, and then acknowledges that he copulated her. And this is how we say it, that she is not believed except if her acknowledgment and the husbands acknowledgment affirmed that they had intercourse. Then how when the narration is not authentic?

And there is no ḥujjah for those who oppose us, not from the Qur’ān and also not from the authentic Sunnah.

Issue: The Words of Ṭalāq

Divorce does not occur except by uttering one of three words: either ṭalāq (divorce), or saraḥ (release), or firāq (separate). Such as saying, “You are divorced (anti ṭāliq),” or “I have divorced you (qad ṭallaqtuki),” or “You are the divorce (anti al-ṭalāq),” or “You are released (anti musarraḥah),” or “I have released you (qad saraḥtuki),” or “You are the release (anti al-saraḥ),” or “You are separated (anti mufāriqah),” or “I have separated you (qad fāraqtuki),” or “You are the separation (anti al-firāq).” All of these are valid if the intention (niyyah) is divorce.

The decisive evidence of that is His saying, “Then you divorced (wording of ṭalāq) them.” [al-Aḥzāb: 49]

And His saying, “So divorce (wording of ṭalāq) them.” [al-Ṭalāq: 1]

And His saying, “And for divorced (wording of ṭalāq) women is a provision.” [al-Baqarah: 241]

And His saying, “Release (wording of sarah) them with a gracious release.” [al-Aḥzāb: 49]

And His saying, “So either retain [them] in kindness or release them (wording of sarah) with good treatment.” [al-Baqarah: 229]

And His saying, “Then retain them in kindness or separate (wording of firāq) from them in kindness.” [al-Ṭalāq: 2]

And His saying, “But if they separate (wording of firāq), Allah will enrich each [of them] from His abundance.” [al-Nisā’: 130]

Allah did not mention the separation of the husband’s bond with the wife except with these words. So it is not permissible to separate a contract which was concluded by the word of Allah and the Sunnah of His Messenger ﷺ except by what Allah and his Messenger ﷺ have stated, “And whoever transgresses the limits of Allah has surely wronged himself.” [al-Ṭalāq: 1]

As for our statement that if he intends divorce with that, that it counts this is because of the saying of the Messenger of Allah ﷺ, “Actions are only by intentions, and each person shall have only what he intended,” as mentioned before.

As for us making a difference between the words of divorce, so we do not oblige his statement, “I did not intend divorce,” to be considered in judgments specifically, and us considering that in the wordings of ‘sarāḥ’ and ‘firāq.’ That is because the word ‘ṭalāq’ and its derivations in the language by which Allah addressed us in the rulings of the Sharī‘ah, are never used except upon the releasement of the marriage contract only, not on another meaning at all.

So it is not allowed for him to be believed in his claim about a ruling that has been established against him with evidence, and also not in annulling rights that have become certain for the woman by the divorce before it.

And we take in consideration his claim of that in a fatwa because it is possible that he intended another word and his tongue slipped to what he did not intend. Since such a matter can only be

known by his statement, then all of his statement must be accepted; it is not allowed to take some of it and discard some of it.

As for ‘sarāh’ and ‘firāq’, both of them occur in the language with which Allah addressed us in His rulings, all in an equal manner, sometimes a separation of the marriage contract, and sometimes to other meanings equally. No one of those meanings is more entitled to the word than the others. So the words, “You are musarraḥa,” can mean, “You are set free to go out if you wish,” and his saying, “I have fāraqtuki,” or “You are mufāraqah,” can occur regarding something else between them in which she disagreed with him. As that is the case, for these wordings specifically it is not allowed to rule that as divorce and separate the marriage contract without a certainty that obliges it

Issue: The Words by Which Divorce Does Not Take Place

And other than these specific words, divorce does not take place by them at all, whether one intends divorce with them or does not intend, not in fatwā and also not in judgments. Such as: “Al-Khaliyyah (free),” ‘Al-Bariyyah (released),” “You are absolved,” “I have set you free,” “Your rope is on your back,” “Al-Ḥaraj,” “I have gifted you to your family,” or to someone other than her family, “Al-Ṭahrīm,” “Al-Takhyīr,” and “Al-Tamlīk.” And these are words about which there have come fatwās from a number of the Companions, nothing of that at all has come from the Messenger of Allah ﷺ. And there is no ḥujjah in the speech of anyone other than him ﷺ.

There are some of these regarding which narrations have come from the Prophet ﷺ, and they are: “Al-Bā’in (separation),” “Al-Battah (absolute/irrevocable),” “i’taddī (observe your ‘iddah),” “Join your family, (Alḥaqī bi-Ahliki)” and, “Your affair is in your own hand.”

As for, “Your affair is in your own hand,” we have already mentioned it before, so it is necessary to present the narrations that have come about the rest of these words and to clarify their rulings if Allah wills.

As for the words regarding which no narration has come from the Prophet ﷺ, then there is no meaning in occupying oneself with them. Because it is not permissible to separate the marriage of a Muslim, or to make permissible the private parts of a Muslim woman to other than the one whom Allah has permitted for her, except for one who is a misguided in his taqlīd, destroying himself and perishing and we seek refuge in Allah from misguidance.

As for, “Alḥaqī bi-’ahlīki,” as narrated from ‘Ā’ishah that, “When the daughter of al-Jawn was brought to the Messenger of Allah ﷺ and he approached her, she said: ‘I seek refuge with Allah from you.’ He said to her: ‘You have sought refuge with the Mighty One. Join your family.’”³⁷⁰

In this narration there is no ḥujjah for the one who claims that the words, “Alḥaqī bi-’ahlīki,” is a wording by which divorce takes place. Because of what Sahl ibn Sa’d narrated, “A woman from the Arabs was mentioned to the Messenger of Allah ﷺ, so he ordered Abū Usayd to send for her. He sent for her and she came and lodged in the grove of Banī Sā’idah. The Messenger of Allah ﷺ entered upon her, and when he spoke to her, she said: ‘I seek refuge with Allah from you.’ He said: ‘I have indeed granted you refuge from me.’ They said to her: ‘Do you know who this is?’ She said: ‘No.’ They said: ‘This is the Messenger of Allah ﷺ who has come to propose to you.’ She said: ‘I was more wretched than that.’”³⁷¹

So these narrations are about one story, about one woman, about one circumstance. So it is then evident that the Prophet ﷺ had not yet married her, he only entered upon her to ask her to marry.

So them clinging unto his statement ﷺ, “Alḥaqī bi-’ahlīki,” is invalidated. Then, even if it would be established that he ﷺ had married her, there is nothing in the narration that states that only he divorced her with his words, “Alḥaqī bi-’ahlīki.” And valid marriages are not annulled except with certainty.

³⁷⁰ Ṣaḥīḥ al-Bukhārī 5254: Ṣaḥīḥ

³⁷¹ Ṣaḥīḥ Muslim 2007, 88: Ṣaḥīḥ

As for “Al-Bā’in,” Abū Bakr ibn Abī al-Jahm narrated, “I entered upon Fāṭimah bint Qays... Her husband had divorced her with a ṭalāq bā’in.”³⁷²

This is no ḥujjah, because it is not from her own wording, it is only from the wording of someone beneath her in the isnād. And there is nothing in it that indicates that the Messenger of Allah ﷺ heard this wording and ruled it a valid way of divorce. There is no ḥujjah in the words of anyone other than him ﷺ. And we have already mentioned in the chapter about triple divorce a collection of narrations clarifying the matter of the divorce of Fāṭimah bint Qays.

As for al-bātt and al-bāttah, it is narrated by Abū Bakr ibn Abī al-Jahm that, “He entered upon Fāṭimah bint Qays, and she informed him that her husband had divorced her with a ṭalāq bātt.”³⁷³

And from Fāṭimah bint Qays, who said, “I was with a man from Banū Makhzūm, and he divorced me al-battah...”³⁷⁴

This is weak because of the weakness of Muḥammad ibn ‘Amr.

And from Fāṭimah bint Qays, “That Abū ‘Amr ibn Ḥafṣ divorced her al-battah, and he sent his agent to her with some barley. She was displeased, so he said: ‘By Allah, you have no claim over us for anything.’ So she went to the Messenger of Allah ﷺ and mentioned that to him. He said to her: ‘You have no maintenance over him...’”³⁷⁵

And from ‘Ā’ishah, “The wife of Rifā‘ah came to the Prophet ﷺ and said: ‘I was with Rifā‘ah, and he divorced me and made my divorce final. Then I married ‘Abd al-Raḥmān ibn al-Zubayr, but what he has is like the fringe of a garment.’ He ﷺ said: ‘Do you want to return to Rifā‘ah? No, not until you taste his honey and he tastes your honey.’”³⁷⁶

³⁷² Al-Mujtaba 3551: Ṣaḥīḥ

³⁷³ Ṣaḥīḥ Muslim 1480, 50: Ṣaḥīḥ

³⁷⁴ Ṣaḥīḥ Muslim 1480, 39: Ḍa‘īf

³⁷⁵ Ṣaḥīḥ Muslim 1480, 36: Ṣaḥīḥ

³⁷⁶ Ṣaḥīḥ Muslim 1433, 111: Ṣaḥīḥ

And from ‘Ā’ishah, “That the wife of Rifā‘ah said: ‘O Messenger of Allah, I was under Rifā‘ah, and he divorced me al-bāttah...’”³⁷⁷

And from Rukānah ibn ‘Abd Yazīd, “That he divorced his wife Suhaymah al-bāttah. The Messenger of Allah ﷺ was informed of it, and he (Rukānah) said: ‘By Allah, I did not intend by that except one (divorce).’ The Messenger of Allah ﷺ said to him: ‘By Allah, you did not intend except one?’ Rukānah replied: ‘By Allah, I did not intend except one.’ So the Messenger of Allah ﷺ returned her to him.”³⁷⁸

This is weak because ‘Abdullah ibn ‘Alī ibn al-Sā‘ib, he is majhūl.

And from al-Zubayr ibn Sa‘īd al-Hāshimī from his grandfather, “That he divorced his wife al-battah. Then he came to the Messenger of Allah ﷺ, who asked him: ‘What did you intend?’ He replied: ‘One (divorce).’ He ﷺ asked: ‘By Allah?’ He replied: ‘By Allah.’ The Messenger of Allah ﷺ said: ‘Then it is according to what you intended.’”³⁷⁹

This is weak because of the weakness of al-Zubayr ibn Sa‘īd and ‘Abdullah ibn ‘Alī ibn Yazīd ibn Rukānah is majhūl.

As for the authentic narrations, we have already said, and we say it again, that there is no ḥujjah in the saying of anyone other than the Messenger of Allah ﷺ.

And as for the narration about Fāṭimah, we have already clarified earlier that the divorce of her husband from her was a triple divorce either three in one, or the final of three, so it is the case that the wording of those who narrated regarding her ‘al-bāttah’, or ‘bātt ṭalāqahā’, or ‘bā’inan’ only mean that from themselves, the final of three divorces. So them clinging unto them is invalid.

As for the ḥadīth of the wife of Rifā‘ah, it is the same as well, as ‘Ā’ishah narrated that, “Rifā‘ah al-Quraẓī divorced his wife, so she

³⁷⁷ Al-Mujtaba 3409: Ṣaḥīḥ

³⁷⁸ Sunan Abī Dāwud 2206: Ḍa‘īf

³⁷⁹ Sunan Abī Dāwud 2208: Ḍa‘īf

came to the Prophet ﷺ and said: ‘O Messenger of Allah, indeed Rifā‘ah divorced me with the final of three divorces.’”³⁸⁰

So this narration of ‘Abd al-Razzāq, from Ma‘mar, clarified, being explicit what others had left general, and it is established that his divorce of her was the final of three.

Then the narration about Rukānah narrated through ‘Abd Allāh ibn ‘Alī ibn Yazīd, from Nāfi‘, from ‘Ujayr and both are unknown as mentioned.

Then the narration from of al-Zubayr ibn Sa‘īd is also weak as mentioned, this Zubayr is abandoned in ḥadīth. So relying upon any narration in this issue is invalid. And it is not permissible to prohibit a private part to one whom Allah has permitted it to, or to permit it to one whom Allah has prohibited it upon, without Qur’ān or authentic Sunnah. And in none of these narrations it is an acknowledgment of the Prophet about those words for divorce they are only some companions describing the act of other companions.

As for the words, ‘i‘taddī’ (observe your ‘iddah), some of those who do not care about saving misguidance by attributing fabricated lies to the Messenger of Allah ﷺ have claimed, “The Messenger of Allah ﷺ said to Sawdah, Mother of the Believers: ‘Observe your ‘iddah,’ and that was a divorce, then he took her back.”³⁸¹

This is a fabricated lie it has only come from Baqiyyah ibn al-Walīd and he is weak. It has never been authentic that the Messenger of Allah ﷺ divorced any of his wives except Ḥafṣah, and then he took her back. As for Sawdah, nothing has come regarding her except that when she grew old she gave up her day and night to ‘Ā’ishah, may Allah be pleased with her³⁸².

And it has come that the Prophet ﷺ intended to separate from her, but when she wanted him to keep her, offering that her day and night be given to ‘Ā’ishah, he did not part from her.

³⁸⁰ Al-Muṣannaf of ‘Abd al-Razzāq 11131, 6/346: Ṣaḥīḥ

³⁸¹ Masā’il Ḥarb al-Kirmānī 2/547-548: Ḍa‘īf

³⁸² Ṣaḥīḥ Muslim 1463, 48: Ṣaḥīḥ

As for what came from those other the Messenger of Allah ﷺ. These are rulings that are not accepted from anyone except from the Messenger of Allah ﷺ, from Allah, who is not questioned about what He does. As for others, they are misguidances, whispers, and frivolous games. We seek refuge in Allah from misguidance. It is not permissible to prohibit a private part that Allah has made permissible by His ruling, or to permit a private part that He has prohibited by His ruling without a revealed text. And with Allah the Exalted is success.

If they say, “Piety and precaution is that he must separate from her by these words.”

We say: The only real piety and real precaution for every muftī on earth is that he does not act claim precaution for others in a way that destroys him, and that he does not permit to prohibit a woman’s private part to her husband or to permit it to another without a ruling from Allah the Exalted and His Messenger ﷺ.

And Allah the Exalted has said, “So they learn from them that by which they cause separation between a man and his wife. But they do not harm anyone through it except by permission of Allah.” [al-Baqarah: 102].

Issue: Appointing Someone Else to Divorce on Behalf

Wakālah in divorce is not permissible. Allah said, “And no soul earns except against itself.” [al-An‘ām: 164] So no one’s action on behalf of another is valid except where the Qur’ān or the established Sunnah from the Messenger of Allah ﷺ have specifically permitted it. And it is not permissible for one person’s words to stand in place of another’s words except where the Qur’ān or the Sunnah of the Messenger of Allah ﷺ have specifically as an exception from this verse permitted it. And no Qur’ān or Sunnah has come allowing someone to pronounce divorce on behalf of another through, so it is invalid. In every place where Allah has mentioned ‘divorce,’ He has addressed the husbands, not anyone else. So it is not permissible for anyone else to act on their

behalf, not through wakālah or other manners, that is transgressing the limits of Allah, and He the Exalted said, “And whoever transgresses the limits of Allah — then they are the wrongdoers.” [al-Baqarah: 229]. And He said, “It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, to have any choice in their affair.” [al-Aḥzāb: 36]. So no one has any choice to oppose what the text has brought.

Issue: Writing a Divorce to the Wife

Whoever writes to his wife a divorce, it is nothing, does not bind anything.

The decisive evidence for this is the saying of Allah, “Divorce is twice.” [al-Baqarah: 229]

And Allah said, “Then divorce them for their ‘iddah.” [al-Ṭalāq: 1]

Divorce in the language with which Allah the Exalted and His Messenger ﷺ addressed us does not apply to writing. The word only occurs in uttering it. So it is established that writing is not divorce until it is pronounced, as no text obligates that. And with Allah the Exalted is success.

Issue: The Husband Divorces But Does Not Know Arabic

Whoever does not know Arabic, divorces in his own language, using the words that is translated in Arabic as ‘divorce.’ And the mute and the sick divorce with whatever sound or gesture they are capable of, such that whoever perceives it is absolutely certain that they intended divorce. The decisive evidence for this is the saying of Allah, “Allah does not burden a soul except what it is able.” [al-Baqarah: 286]. And the saying of the Messenger of Allah ﷺ: “If I order you with something, then do of it what you are able,” as mentioned before. So it is

established that whatever is beyond a person's capacity and ability has fallen from him, and that he only performs of what he has been ordered that which he is able. And with Allah the Exalted is success.

Issue: He Divorced His Wife While He is Absent From Her

Whoever divorces his wife while being absent from her, it is not a divorce. She remains his wife as she was, they inherit from each other if one of them dies, and all the rights of marriage remain between them, whether she has been copulated or not, whether the divorce was three times or less, until it reaches her. When the news reaches her from someone she believes, or by testimony accepted in judgment, then at that point the divorce becomes binding upon her, if she is pregnant, or if she is in a state of purity which is not menstruation while not having had intercourse with her in that state of purity after the menstruation ended.

The decisive evidence for this is the saying of Allah, "O Prophet, when you divorce women, divorce them for their prescribed waiting period, and measure the waiting period carefully. And fear Allah, your Lord. Do not send them out of their homes, nor should they leave except if they commit a clear immorality. And those are the limits of Allah. Whoever transgresses the limits of Allah has certainly wronged himself." [Al-Ṭalāq: 1]

And this is the description of the divorce of a woman who has been touched.

And Allah said, "There is no blame upon you if you divorce women before touching them or assigning them a prescribed dower. And provide for them according to what is acceptable for those who are able and according to what is within the means of the constrained." [Al-Baqarah: 236]

And Allah said, “O you who believe, when you marry believing women and then divorce them before touching them, there is no prescribed ‘iddah for them to observe. So provide for them and release them graciously.” [Al-Aḥzāb: 49]

And Allah said, “And do not harm them to impose difficulty upon them. And if they are pregnant, then spend on them until they deliver their burden.” [Al-Ṭalāq: 6]

So this is the description on the divorce of one who has not been touched. This includes the three divorces in a row (ṭalāq al-majmū‘a) and the final of the three divorces given.

And by necessity it is certain to everyone with sound mind that whoever divorces her without conveying it to her has harmed her, and harming her is prohibited; so his action is rejected and invalid.

Disobedience cannot act on behalf of obedience, and cannot take the place of sin. And it is by necessity certain to everyone that whoever does this has not released her with a good releasement, and whoever does not divorce her for the prescribed waiting period (‘iddah) and does not count the ‘iddah, has not divorced her as Allah ordered, and whoever does not divorce as Allah ordered has not divorced at all.

If the narration of Abū Bakr ibn Abī al-Jahm is mentioned, “I heard Fatimah bint Qays say: ‘My husband sent me my divorce, so I wrapped my clothes tightly around myself and went to the Prophet ﷺ. He asked: ‘How many times did he divorce you?’ I said: ‘Three.’”³⁸³

We say: Yes, and this is our view. We have never said that the divorce does not bind her if it reaches her. There is in this that the divorce does not bind her except from the moment the ‘iddah becomes incumbent upon her, not before that, and that is when it reaches her, it is not permissible to create a gap between the divorce and the beginning of her first ‘iddah.

And it is not permissible for a married woman whose husband has divorced her to be outside the of marriage without her ‘iddah. This

³⁸³ Al-Mujtaba 3418: Ṣaḥīḥ

is against the Qur‘ān and Sunnah. Then how when it has come contrary in the narration of Fatimah to what Abū Bakr ibn Abī al-Jahm narrated. As narrated by Abū Salamah ibn ‘Abd al-Raḥmān ibn ‘Awf, “That Fatimah bint Qays informed him that Abū Ḥafṣ ibn al-Mughīrah divorced her three times, then departed to Yemen.”³⁸⁴

If it is said, “Then you do not permit a divorce that is uttered to be delayed to occur at a specific time, and also not a divorce by description, and you use as evidence for this that every divorce that does not occur at the moment occurs that it is impossible for it to occur when it did not occur, then how then did you permit the divorce of one who is absent?”

We say: It is because Allah taught us the rules of divorce for every type of divorced woman, and the non-adult who is not addressed, and the insane woman, for whom address about the divorce not oblige. The one who divorces can do that at the door of her house and send the news to her, even from a distance. If this is permissible, then there is no difference between divorce at a distance, even if it is at the farthest inhabited place or behind a wall. And this is not a divorce specified to occur at a specific time, instead all of it is a valid divorce once the news reaches her, or reaches her family if she is among those who cannot be addressed as address does not occur on them yet. By this, the marriage becomes dissolved, just as it is with faskh, and there is no difference.

Issue: Divorce in One’s Mind

Whoever divorces in his own mind, it is nothing, it does not occur.

The decisive evidence for this is the authentic narration from the Messenger of Allah ﷺ, “My Ummah is pardoned for what they speak to themselves, so long as it does not exit by speech or action.”³⁸⁵

³⁸⁴ Ṣaḥīḥ Muslim 1480, 38: Ṣaḥīḥ

³⁸⁵ Ṣaḥīḥ Muslim 127, 201: Ṣaḥīḥ

It is then established that matters of the mind alone have ruling as long as it is not uttered or acted upon.

And likewise, freeing a slave (‘itq) in one’s mind, raj’ah of the divorced wife in one’s mind, gifts or charity in one’s mind, and becoming Muslim in one’s mind, none of these have any effect.

The obligation and caution is that no judge must rule, and also not any muftī give a fatwa about the dissolution of a marriage contracted in accordance with the Book of Allah and the Sunnah of His Messenger ﷺ, without a text from the Qur’ān or Sunnah.

Those who oppose this and claim it binds a divorce mention the authentic narration of the Messenger ﷺ: “Actions are only by intentions, and everyone will have what they intended.”³⁸⁶

This narration is a ḥujjah for us against them, because the Prophet ﷺ did not separate intention from action, and also not action from intention, he instead combined them and did not oblige a ruling based on one without the other.

So we say: Whoever intends divorce but does not utter it, or utters it without intending it, the divorce does not occur, except when he both utters it and intends it. Except if there is a specific as an exception from this that obliges a ruling based on only the intention without action, or action without intention. In such cases, it must not be transgressed. And Allah the Exalted grants success.

They also argue, “You say that whoever believes kufr in their heart is a kafir even if he never uttered it, and you say the persistent sinner is sinful in that manner and you say whoever falsely accuses (qadhf) a chaste woman in his mind is sinful, and that whoever unjustly believes a Muslim as an enemy is sinful before Allah, even if he did not make that apparent with an action or saying. And that whoever has riyā’, which is in himself is destroyed and likewise pride.”

We say: As for kufr held only in the heart, the Qur’ān has come with this by naṣṣ. Allah said, “O Messenger, let not those who hasten

³⁸⁶ Ṣaḥīḥ al-Bukhārī 1: Ṣaḥīḥ

into disbelief grieve you, those who say ‘We believe’ with their mouths, while their hearts do not believe.” [al-Mā'idah: 41]

So these cases are then as an exception outside the other texts from the Qur'ān and Sunnah in which is pardon from what occurs in the mind. And also the pardon for matters that occur in the mind applies only to the Ummah of Muḥammad ﷺ. This is a virtue granted to them by the explicit text of the narration. Whoever conceals kufr is not part of his Ummah ﷺ and is outside this virtue. As for the one who persists in sin, it is not as you may have assumed. It is authentically narrated from the Prophet ﷺ that he said, “Whoever intends a bad deed but does not act upon it, it is not recorded against him.”³⁸⁷

So it is established that the persistent sinner is the one who commits the sin and then persists in it, this combines the intention of the sin with the act together.

As for the one who falsely accuses (qadhf) a chaste woman in his mind, Allah the Exalted has prohibited him from evil suspicion. This is an evil thought, and by the text, so it exits from that which is pardoned by the general pardon for matters of the mind. It is not permissible to make qiyās of this to others such as divorce, opposing the established text regarding Allah's pardon.

As for the one that believes in himself enmity towards a Muslim, if he does not harm them by action or speech, it is merely an inner feeling, and feelings that a person cannot remove from themselves are not held accountable. And this is only what a person cannot remove from themselves, but if anyone deliberately maintains that enmity, he is sinful, because he is ordered with the muwālah of the Muslim and loving him, so he has transgressed what Allah has ordered; so by that he is a sinner. And in this manner is riyā' and having pride, they are prohibited by texts³⁸⁸ that are specified out as exceptions, and there has never a text obliging that divorce, freeing a slave, raj'ah, gift,

³⁸⁷ Musnad Aḥmad 7196: Ṣaḥīḥ

³⁸⁸ Ṣaḥīḥ Muslim 2987, 48: Ṣaḥīḥ

or charity in one's mind alone oblige anything if it is not acted upon or uttered. So all such acts of the mind alone are null and void.

Issue: Divorcing Without Intending Divorce, Such As Slips of the Tongue

The Husband that divorces without intending divorce but makes an accidental mistake such as a slip of the tongue, then if clear evidence is established against his claim of that, the divorce is judged to have occurred. If no evidence can be established, but he merely seeks a ruling, the divorce does not take effect.

The decisive evidence for this is the saying of Allah, “And there is no blame upon you for what you have erred in, but [only for] what your hearts intended.” [al-Aḥzāb: 5]

And the saying of the Messenger of Allah ﷺ, “Actions are only by intentions, and every person will have only what they intended.”

It is then established that no action occurs without intention, and no intention is valid without action.

As for when clear evidence is established against his claim, then it is a valid right that has been established, and his claim, “I did not intend divorce,” contradicts this established truth. So his claim is false and invalid.

Issue: The Divorce of a Mushrik is not Binding

The divorce of a mushrik is not binding. As for a mushrik marrying, selling, buying, gifting, charity, freeing of a slave, and mu‘ājarah (hiring, leasing), all of these bind and are permissible.

The decisive evidence for this is the saying of the Prophet ﷺ, “Whoever does an act that is not in accordance with our order, it is rejected,” as mentioned before.

And the statement of Allah the Mighty and Majestic, “And whoever transgresses the limits of Allah has certainly wronged himself.” [al-Ṭalāq: 1]

So these two texts establish that whoever acts contrary to what Allah the Mighty and Majestic or His Messenger ﷺ ordered, his act is invalid and must not be considered.

There is no doubt that a kafir is ordered to say, “There is nothing worthy of worship except Allah, Muhammad is the Messenger of Allah.” And they are threatened for abandoning it with eternal punishment.

So, every words he says and leaves the two shahādatayn mentioned, he has placed those words not in its place so it is not considered.

If it is asked, “How do you then permit the other contracts that you mentioned?”

We say: As for marriage, the Messenger of Allah ﷺ permitted the marriage of polytheists and maintained them in their marriage from their times of kufr after them becoming Muslims.

And as for selling and buying: The Messenger of Allah ﷺ dealt with the traders among the disbelievers. When he ﷺ passed away, his armor was pawned with a Jew for barley.

As for mu‘ājarah (hiring, leasing): The Messenger of Allah ﷺ hired Ibn Arqaṭ to guide him to Madinah while he was a kafir, and he dealt with the Jews of Khaybar in working their land and trees, taking half of what Allah provided from it.

As for gifts, charity, freeing a slave: Ḥakīm ibn Ḥizām said, “O Messenger of Allah, things I did during the Jahiliyyah, in freeing slaves, maintaining kinship, and giving charity?” The Messenger ﷺ said, “You have embraced Islam regarding the good that you did before.”³⁸⁹

³⁸⁹ Ṣaḥīḥ Muslim 123, 194: Ṣaḥīḥ

So the Prophet ﷺ called all of that good and confirmed it as valid. As for divorce, no text is specified about its validity in their case, so the ruling remains as previously established.

If they mention the saying of Allah, “And judge between them by what Allah has revealed and do not follow their desires.” [al-Mā'idah: 49]

We say: And this what we ruled between them is what Allah revealed.

Issue: Divorce Under Compulsion

The divorce of one who is compelled is not binding.

Those who permit it rely on a narration from Ṣafwān ibn 'Amr al-Aṣamm al-Ṭā'ī from a man among the companions of the Messenger of Allah ﷺ: “A man’s wife sat on his chest, placing a knife to his throat, and said to him: ‘Divorce me, or I will slay you.’ He pleaded to Allah, but she refused, so he divorced her three times. This was mentioned to the Prophet ﷺ, who said: ‘There is no qailūlah (resting or dozing) in divorce.’”³⁹⁰

And from Ṣafwān ibn 'Amr al-Aṣamm al-Ṭā'ī, “A man’s wife sat on his chest and placed a knife on his heart, saying: ‘You must divorce me or I will kill you.’ He divorced her, then went to the Messenger of Allah ﷺ, who said: ‘There is no qailūlah in divorce.’”³⁹¹

This narration is extremely weak: Ṣafwān, Baqiyyah and al-Ghāzī ibn Jabalah are all weak.

And another narration about Ibn 'Abbās from the Prophet ﷺ, “All divorce is valid except the divorce of one who is mentally incapacitated.”³⁹²

³⁹⁰ 'Ilal al-Ḥadīth of ibn Abī Ḥātim 1312, 4/134: Ḍa'īf

³⁹¹ Sunan Sa'īd ibn Manṣūr 1131: Ḍa'īf

³⁹² Al-Kāmil of ibn 'Adī 5/356: Ḍa'īf

This is worse than the first, because ‘Aṭā’ ibn ‘Ajlān is described with lying and Ismā‘īl ibn ‘Ayyāsh is weak.

And it is narrated from Abū Burdah, “The Prophet ﷺ said: ‘Why are men playing with the limits of Allah, saying, ‘I divorced, then reconciled?’”³⁹³

This is a mursal narration and no mursal is ever a ḥujjah .

And it is narrated about al-Ḥasan, “The Prophet ﷺ said: ‘Whoever divorced playfully, married playfully, or freed playfully, it is permissible.’”³⁹⁴

This is weak because it is mursal and no mursal is a ḥujjah and there is no mention in it about divorce under compulsion. And others have come through Ibrāhīm ibn Muḥammad ibn Abi Layla who is weak and known for lying, and Sālim al-Khayyāt is also weak, and there is not in it except that the one mentions divorcing or freeing a playful person, with no mention of compulsion.

And it is narrated from ibn Jurayj from the Prophet ﷺ with the same narration³⁹⁵.

This has a very clear inqitā’ for everyone with eyes and there is no mention of compulsion in it.

If asked, “But it is a divorce and a divorce is valid.”

The answer is: No. Divorce only occurs when the one divorcing utters it deliberately with the intent in his heart, as Allah ordered as clarified before. As everything they mention is false we will mention the certain decisive evidences. The Prophet ﷺ said, “Actions are only by intentions, and every person will have what he intended.” It is then established that every act without intention is invalid, and the divorce of one compelled is an act without intention; it is invalid. It is only a verbal act of the compelled person, and no divorce occurs from words not intended. It is authentically narrated from the Prophet ﷺ, “Allah has

³⁹³ Musnad al-Ṭayālīsī 529: Ḍa‘īf

³⁹⁴ Al-Ḥujjah ‘Ala Ahl al-Madīnah 3/201: Ḍa‘īf

³⁹⁵ Al-Muṣannaf of ‘Abd al-Razzāq 10250, 6/135: Ḍa‘īf

pardoned my Ummah for mistakes, forgetfulness, and what they were compelled to do.”³⁹⁶

Issue: Saying, “If I Marry So-and-So, She is Divorced”

Whoever says that if he marries someone or says, “She is divorced three times,” all of this is invalid and void. He is permitted to marry her, and no divorce occurs. The same is if he says, “Every woman I marry is divorced,” whether specifying a short or long period, a relative or a stranger, a local or foreign woman, all of this is void and not binding.

We look at what those who bind divorce by this this rely upon and we find that they say, “Do not oppose us regarding the one who said to his wife: ‘You are divorced if you separate from me.’ So it is established that the divorce is attached to the time or circumstance that attributed to it.”

We say: This is nothing, because he did not execute the divorce as ordered. He instead did not make it effective when he spoke it, and he made it occur where it cannot occur. So it is merely invalid and false.

They ask, “We make qiyās of this to nadhr (vows)?”

We say: Every single qiyās is false, then even if qiyās would ever be valid, it would still be invalid because a vow has come with text, and there is no text that divorce before marriage has any effect.

And a vow (nadhr) is an act of drawing close to Allah, while divorce is not something to draw near to Allah by, and it is also not something Allah has ordered or encouraged His servants to do.

They do not differ with us on the point that whoever says: “I have a vow to Allah to divorce my wife,” that this does not bind him to divorce her.

This invalidates their deception in this matter clinging unto the words of Allah, “Fulfill the contracts,” [al-Mā'idah: 1] because divorce

³⁹⁶ Sharḥ Ma'ānī al-Athār 4649: Ṣaḥīḥ

is a contract of which the fulfillment of it is not obligatory for the one who has made it for himself, with the meaning that he contracts to divorce except that he did not divorce, so a divorce is not among the contracts (‘uqūd) which Allah ordered to fulfill before it occurs.

If they say, “We make qiyās of it to a waṣiyyah (will).”

This is among their most absurd qiyāsāt and most evident in corruptness. A waṣiyyah is carried out after death, while if a living person divorces after his death, it is not valid. And a waṣiyyah is an act of drawing near to Allah, it is instead obligatory. Divorce is not obligatory and also not recommended. And there does not exist anything else they tumult by.

Then we returned to our own statement and found Allah says, “If you divorce women, divorce them for their prescribed period.” [at-Talāq: 1].

And He says, “O you who believe! When you marry believing women, then divorce them before you have touched them.” [al-Aḥzāb: 49].

Allah did not make divorce occur except after the marriage contract. And it is from falsehood for divorce not to occur at the moment it is pronounced, but later at a time it is not pronounced. And divorcing an ajnabiyyah is invalid and is nothing.

Issue: Divorce of the Intoxicated

The divorce pronounced by an intoxicated person (sakran) is not binding. The same is with the one that loses their ‘aql without khamr. The limit of intoxication (sukr) is when a person mixes in his words so he comes with what is incomprehensible and with that which if he is not intoxicated he does not come with that. Even if they say something comprehensible in the midst of this, it is still intoxication. Because the insane can come with what is comprehensible and restrain themselves from authority or other fears. As for someone whose tongue becomes heavy, their speech slurs, their gait falters, and they are violent only,

but do not utter what is incomprehensible, then they are not intoxicated.

The decisive evidence of this is the saying of Allah, “Do not approach prayer while you are intoxicated until you know what you are saying.” [an-Nisā’: 43]

Allah clarified that the intoxicated person does not know what he is saying; whoever does not know what he is saying is intoxicated, and whoever knows what he is saying is not intoxicated. Whoever mixes and says both comprehensible and incomprehensible things is intoxicated, because he does not know what he is saying. And whoever Allah informs us that he does not know what he is saying must not be held accountable for any rulings, not for a divorce and also not anything else, because he is not addressed; as he is not among those of sound intellect.

We then look at the arguments of those who oppose this.

They said, “He brought the loss of his intellect (‘aql) upon himself by his sinning against Allah.”

We say: So what? And from where is it obligatory that if he brought this upon himself, he must be held accountable for what occurs in the loss of his ‘aql? This is not found anywhere in the Qur‘ān and authentic Sunnah.

And there is no disagreement among you regarding someone who attempts to kill himself while sinning against Allah, but his life is then preserved except that he fell on his head, corrupting his ‘aql. And the muḥārib who does ḥirābah, and he is the highwayman, if he corrupts the roads but is struck in the head, and corrupts his ‘aql, they do not differ that these people are not held accountable for what the healthy and sound people do. While they brought it upon themselves by committing major sins.

They also cling unto the fabricated narration attributed to the Prophet ﷺ, “There is no (thing) invalidating the divorce.”³⁹⁷

³⁹⁷ Al-Du‘afā’ of al-‘Uqaylī 2/328: Ḍa‘īf

And this is weak because it is mursal and it is from Baqiyyah ibn al-Walīd who is weak.

They also relied on the false narration, “Every divorce is (always) valid except the divorce of the one with deficient intellect (ma‘tūh).”³⁹⁸

This is weak because of the weakness of ‘Aṭā’ ibn ‘Ajlān al-Ḥanafī. And Ḥusayn ibn Yūsuf al-Tamīmī and Muḥammad ibn Marwān are both majhūl.

As for the intoxicated person (sagrān) who does not know what he is saying, he is ma‘tūh without doubt, because in the language ‘ma‘tūh’ is the one that has no intellect. And whoever does not know what he is saying, he has no intellect so he is ma‘tūh insane in any respect.

If they say, “Some companions said that if a person consumes khamr they are intoxicated and if they are intoxicated they rave and if they rave they make qadhf and if they make qadhf there is eighty lashes.”

The ḥujjah is only in Qur‘ān and Sunnah and nothing else and there is no ḥadd on the one that raves. Why do you not say that if he raves he commits kufr and if he commits kufr he is killed?

They say, “By the intoxication itself, a ḥadd is obligatory; and divorce like that as well?”

We said: You lie, a ḥadd is never obligatory because of intoxication. It is only obligatory by consuming that which much of intoxicates, whether he becomes intoxicated or not.

And they said, “He is addressed regarding prayer even if he is intoxicated as in the verse about not praying till knowing what a person says; so his divorce is then also binding?”

We said: You lie. There is instead in the texts of the Qur‘ān clarifying that he is not addressed with prayer, he is instead prohibited from it till he knows what he says.

³⁹⁸ Al-Kāmil of ibn ‘Adī 5/395: Ḍa‘īf

They said, “If that would be the case, anyone who wished could kill his Muslim enemy while intoxicated?”

We said: Then say the same about a ḥadd on the insane. Because if there would be no ḥadd against them then whoever wishes can kill his enemy while being insanity, avoiding by that the ḥadd? But we say: The intoxicated is known among those intoxicated in ruling, and the insane is known among the insane in ruling.

And what clarifies the correctness of our saying is what ‘Alī narrated in a long narration, “The Messenger of Allah ﷺ rebuked Ḥamza for what he did when he bit the ears of ‘Alī while drinking with some of the Ansār. ‘Alī said: ‘Ḥamza was intoxicated, his eyes reddened.’ Ḥamza said to him: ‘Are you not merely slaves of my father?’ The Messenger of Allah ﷺ recognized that he was intoxicated and retreated, and we left with him.”³⁹⁹

This is Ḥamza, saying while intoxicated something that, if said by someone not intoxicated, would have apostated. Allah protected him from that.

So it is established that the intoxicated is not held accountable for what he does in general for anything. As for the one that divides and obliges riddah but then not in other cases, it is contradictory, a false ruling with certainty and a claim for which is no evidence. And Allah grants success.

Issue: An Oath to Divorce is Not Binding

An oath to divorce not become binding whether he fulfills it or breaks it, no divorce takes place by it. Divorce only occurs in the manner that Allah has ordered, and an oath only exists in the manner that Allah has ordered upon the tongue of His Messenger ﷺ.

The decisive evidence for this is the saying of Allah, “That is the expiation for your oaths when you have sworn.” [al-Mā'idah: 89]

³⁹⁹ Ṣaḥīḥ al-Bukhārī 4003: Ṣaḥīḥ

Ibn ‘Umar narrated, “The Messenger of Allah ﷺ said, Whoever takes an oath, let him not take oath except by Allah.”⁴⁰⁰

This removes all ambiguity that every oath not by Allah is an act of disobedience, not a true oath. Divorce through a description specified that if it occurs then she will be divorced, is just like divorce by an oath, none of it becomes binding and the clarification of that has preceded. And with Allah is success. Divorce does not occur except in the manner that Allah has ordered and made known, and that is with the intention directed towards divorce itself. As for anything besides that, it is invalid and a transgression against the limits of Allah.

Issue: If He Says, “When the beginning of the month comes, you are divorced”

Whoever says, “When the beginning of the month comes, you are divorced,” or mentions a certain time, the divorce does not occur by that statement, not at that moment he uttered it and also not when the beginning of the month arrives.

The decisive evidence for this is that there is no Qur’ān or Sunnah indicating that divorce occurs by such words. Allah has taught us the method of divorce for the copulated and non-copulated wife. And this is not what He has taught us, “And whoever transgresses the limits of Allah has certainly wronged himself.” [al-Ṭalāq: 1]

And also, verily, every divorce that does not occur at the moment it occurs, it is impossible for it to occur after that at a time it did not occur.

As for those who claim that the moment he utters such a divorce that she is immediately divorced and not at the specified time, they say, “This is a divorce mentioned to occur at a later time, so it is invalid just as a marriage delayed to a later time is invalid. If he says, ‘You are

⁴⁰⁰ Ṣaḥīḥ al-Bukhārī 3836: Ṣaḥīḥ

divorced,' then divorce is permissible. But the specified later time he mentions is false, as it is a condition not mentioned in the Book of Allah, so that is invalid."

We say: Instead that divorce is nothing but invalid and not allowed as he linked it to a time and it is not allowed to oblige him some of what he obliged himself without the remaining, so the corruptness of their saying is apparent.

And what suffices for all of this is that it is a prohibition of a private part by conjecture (ẓann) what Allah has made permissible with certainty. And we seek refuge in Allah from this. And the specified time might come while he is dead or she is dead or both or when he had divorced her thrice already so the corruptness of their saying is entirely evident.

Then we look at what those who allow a marriage linked with a time and that the divorce occurs at the specified time and they mention the verse, "Fulfill the contracts." [al-Mā'idah: 1]

So we say: This is only for every contract that Allah has ordered the fulfillment of, or encouraged towards, not every contract in general, and not a contract in which is sin. And among the sins is to issue divorce contrary to what Allah has ordered; so, it is not permissible to fulfill it.

If they mention the narration attributed to the Prophet, "The Muslims are bound by their conditions."

This is the same as what came before it, for the Messenger of Allah ﷺ said: "Every condition not in the Book of Allah is false."

And a divorce linked a specified time is a condition not in the Book of Allah, so it is invalid and false and does not occur.

They also say, "We make qiyās of this with debts which are delayed to a specified time, and with freeing a slave to a delayed time."

So we say: Qiyās is false. Then even if it ever would be valid, this would be false, because all of them agree that marriage contracted to a delayed time is not permissible, and that such a marriage is false. Then why did you not make qiyās of divorce linked with a specified

time to the prohibition of linking marriage to occur at a specified time while their rationale (‘illah) is closer?

And they say also said, “There is *ijmā’* that divorce occurs when the specified time arrives, because the one that makes it occur when it is uttered has allowed that so it is obligatory to turn what is agreed upon.”

We say: This is not *ijmā’* at all. Because the one that makes divorce occur when the man utters the divorce never allow ever its occurrence to be delayed to another time and those who make it occur at the specified time do not allow its occurrence when it is uttered.

They also say, “For our saying there is the saying of a Companion, and no opposing view from another Companion is known.”

This is a corrupt method that is not a *ḥujjah*, so their claims fall apart. And praise be to Allah, Lord of the worlds.

Issue: If a Man Gives His Wife Authority to Divorce Herself

If a man gives his wife the authority to divorce herself, it does not become binding upon him, and she does also not become divorced, whether she divorces herself or not, because of what we clarified earlier, that Allah has made divorce in the hands of men, not women.

Issue: Divorce Never Becomes Irrevocable (Bā’in) Except in Two Cases

Divorce is never irrevocable except in two situations, for which is no third.

The first is: Divorcing a wife who has not been touched by the husband, because Allah said, “O you who have believed, when you

marry believing women and then divorce them before you have touched them, then there is not for you any waiting period to count against them.” [al-Aḥzāb: 49]

The second is: triple divorce, whether it is uttered all at once in a row separately, because Allah said, “Then if he divorces her, she is not permissible for him afterward until she marries a husband other than him.” [al-Baqarah: 230]

As for anything other than these two, then no, it is not bā’in, at all, because Allah said, “And their husbands have more right to take them back in that period.” [al-Baqarah: 228]

And He also said, “Retain them in kindness or release them in kindness.” [al-Baqarah: 231]

And He said, “Then when they have reached their term, retain them in kindness or part with them in kindness.” [al-Ṭalāq: 2]

So the husband has been given the choice, during the waiting period (‘iddah), either to take her back or to leave her. Except that al-Shāfi‘ī ruled khul‘ as an irrevocable divorce (raj‘ī)⁴⁰¹, and according to us it is not, we will clarify this in its chapter, if Allah wills.

So if a man says to his wife, “You are divorced, and I have no right to return to you (raj‘ah); You instead have ownership of yourself by it.”

We say: This is corrupt saying through which no divorce takes place at all, because he did not divorce in the manner Allah ordered, and there is no divorce except as Allah has ordered.

The Messenger of Allah ﷺ said, “Whoever performs an action that is not in accordance with our order, it is rejected.”

And revocable divorce (talaq raj‘ī) is that in which the husband is given the choice, so long as she is in her waiting period (‘iddah), and he can then choose to either leave her until her ‘iddah expires at which point she has control over herself and he cannot return to her except with the permission and words of nikah of the walī, her consent, and a

⁴⁰¹ Al-Umm 5/123

new mahr, or to testify to taking her back within that time, in which case she becomes his wife, whether she likes it or dislikes it, without a walī, mahr, but with testimony only.

If one of them dies before the end of the ‘iddah and before taking her back, the one alive inherits from the other. There is no disagreement in this matter among anyone.

And irrevocable divorce (talaq bā’in) is that in which the husband has no right to return her (no raj‘ah), meaning no ‘iddah to her except if she herself wishes, in less than three divorces, with a walī, mahr, and her consent. During revocable divorce, her maintenance is obligatory on the husband as long as she is in the ‘iddah, and his further divorces still apply to her.

Issue: If a man says, “You are divorced, in shā’ Allāh”

If a man says, “You are divorced, in shā’ Allāh,” or he says, “Except if Allah wills,” or he says, “Except if Allah does not will,” then all of this is the same, and no divorce occurs through any of it.

Allah said, “And never say of anything, ‘I will do that ghadan,’ except if Allah wills.” [al-Kahf: 23-24]

Ghadan in Arabic does not mean tomorrow only it means any time in the future.

And He said, “And you do not will except that Allah wills.” [al-Insān: 30]

We know that if Allah had willed the occurrence of such a divorce, He would have made it easy for the man to pronounce it without making him say it with an istithnā’ (saying in shā’ Allāh and the likes of it). So it is established that Allah did not will its occurrence, as He made it easy for him to attach the istithnā’ upon His will. The will of Allah is known without doubt, everything that comes to pass, Allah has willed it; and whatever does not come to pass, we are certain Allah did not will it.

Issue: He divorced His Wife, Then Repeated Her Divorce to Everyone He Met, Testifying or Informing Them

Whoever divorced his wife, then repeats her divorce to everyone he meets whether as testimony or mere information, this counts as one divorce only. Nothing more is binding upon him, because he in such cases does not intend by that another divorce. And there is no disagreement on this matter.

Issue: His Wife Was Certain That He Had Divorced Her Thrice

If a man's wife became certain that he had divorced her three times or said the final of three, or it was less than three divorces and did not bring witnesses to him taking her back (raj'ah) till the 'iddah ended, then he kept her transgressing: it becomes obligatory upon her to flee from him if she has no evidence that he took her back with raj'ah. If he coerces her, she is permitted to kill him in self-defense. Otherwise, if she allows him access to herself, it is zinā from both of them because he is an ajnabī to her, just like any passing stranger. His ruling in everything is the ruling of a stranger.

Issue: Divorce of the Sick Man

The divorce of a sick man is like the divorce of a healthy man, without difference whether he dies from that illness or not. If the divorce of the sick man was three, or the last of three, or before touching, and then he died or she died, whether the completion of the 'iddah or after it, or it was a revocable divorce (raj'ī) but he did not take her back until he died or she died after the 'iddah, then she does not inherit from him in any of this, and he inherit from her at all. And the same is with the divorce

of the healthy man with a sick woman and the divorce of a sick man and sick women without any difference. And likewise the divorce of the man that is standing ready to be killed in execution and divorcing a woman whose pregnancy is starting to become apparent. And it is established that a sick woman divorced with a divorce that is *bā'in*, or a woman is divorced and he did not touch her, there is no inheritance at all as they are not his wife. And likewise a woman divorced revocably (*ṭalāq raj'ī*) during illness, if he does not return her (*raj'ah*) then there is no inheritance for her, even if he announces publicly open that he only did this so that she does not inherit because he only does what is permitted from divorce by which Allah removes inheritance between them and removes marriage between them by that. There is no meaning and no evidence whatsoever in preventing this if he does it with this intention. Likewise, if he divorces while facing execution, or in the case of stoning for adultery, whether the execution is for a valid reason or not, there is no difference, because no text has ever distinguished the divorces of these cases from others. Whoever makes differences in these has ordered consuming wealth by false means, there is nothing from it from the Qur'ān and Sunnah

The Rulings of Khul‘

Issue: Khul‘ if the Woman Dislikes Her Husband

Khul‘ is iftidā’ (a ransom) as it is giving a wealth to free herself. And that is if the woman dislikes her husband and fears that she will not fulfill his right, or he fears that he will dislike her and not fulfill her right. She can then ransom herself from him then he divorces her if he wants that, if he does not want that then he is not forced to do that, and she is also not compelled to. This can only occur if both want it. A woman can never do this independently without the husband, and also not a ‘judge’ can carry it out for the woman, no matter how sinful the man is. And ransoming (iftidā’) is not allowed except in the two manners mentioned or one of the two manners mentioned. If it occurs without that it is false and he gives her back what he took from her and she is his wife as she was, the divorce is invalid and he is only prevented from oppressing her only. And she can ransom herself with everything she owns, and all of this if it occurs is a ṭalāq raj‘ī (revocable divorce), except if he divorces her three times, or with the last of three, or if she has not been touched yet. If he takes her back during the ‘iddah, that is valid, whether she desires it or dislikes it but then he must return to her what he took from her. It is permissible for the ransom to be with a described service, and not with unknown wealth, it must be with something known, limited, visible, certain, or described.

Some people claimed that khul‘ is prohibited in general.

They mention the verse, “Then there is no blame upon them concerning that by which she ransoms herself.” [al-Baqarah: 229]

They say, “This has been abrogated.”

They mention for its nāsikh the verse, “And if you desire to replace one wife with another and you have given one of them a heap of gold, do not take from it anything. Would you take it in injustice and manifest sin? And how could you take it while you have been intimate

with one another and they have taken from you a solemn covenant?”
[al-Nisā’: 20–21]

And they mention what Thawbān narrated, “The Messenger of Allah ﷺ said: ‘Any woman who asks her husband for divorce without harm, the fragrance of Paradise is prohibited to her.’”⁴⁰²

And they mention what Abū Hurayrah narrated from the Prophet ﷺ, that he said, “Those women who snatch themselves away (muntazi‘āt) and those who seek khul‘ (mukhtali‘āt) are the hypocrites.”⁴⁰³

This is weak as Al-Ḥasan said that he did not hear this from Abū Hurayrah, and instead he never heard anything from him at all.

As for the first narration, there is no ḥujjah in it for prohibiting khul‘, because there is only in it the threat upon the woman who asks for divorce without harm. And this is also what we say. And there is no harm greater than fearing that the limits of Allah will not be upheld for the wife so if she asks it without harm she falls under the threat, otherwise she is doing what is allowed.

As for the two verses, they are not contradictory. There is only in the verse the prohibition of taking anything from her mahr as a manifest sin and injustice, and that is something in which is no doubt. And there is not in both of them the prohibition of khul‘ at all.

And He said, “But if they remit to you anything of it voluntarily, then consume it with satisfaction and ease.” [al-Nisā’: 4]

And in the verse is the ruling of khul‘ with her will, so it is not a sin and also not an aggression. And whatever is of this manner, it is not allowed to say about it that there is from it an abrogating (nāsikh) or abrogated (mansūkh) except with a naṣṣ. Instead the obligation is to act upon both verses, not to abandon one of them for the other and we are able to act upon both by making an exception in one of them from the other.

⁴⁰² Sunan Abī Dāwud 2226: Ṣaḥīḥ

⁴⁰³ Al-Mujtaba 3461: Ḍa‘īf

Allah said, “And if a woman fears from her husband arrogance or aversion, then there is no blame upon them if they reconcile between themselves with an agreement — and reconciliation is best.” [al-Nisā’: 128]

And Allah said, “But if you fear that they will not uphold the limits of Allah, then there is no blame upon them concerning that by which she ransoms herself.” [al-Baqarah: 229]

So these two verses over all that is in khul’.

Some people claimed, “There is no khul’ except with a ruler.”

There is no evidence whatsoever for this.

As for those who say that khul’ is not a ṭalāq, they say, “Allah mentioned ṭalāq, then khul’, then ṭalāq again in the verses of al-Baqarah in 229 and 230. Allah mentioned in 229 divorce twice then after that khul’ which would then be three divorces then in the next verse divorce again, so if khul’ is a divorce then there are four divorces?”

We say: There is nothing in the verses that indicates that this is about one situation. And there is nothing in the Qur’ān that it is not a ṭalāq, and also not that it is a ṭalāq. So it is obligatory to turn to the clarification of the Messenger of Allah ﷺ.

So those that claim that khul’ is faskh cling unto what is narrated about Ḥabībah bint Sahl al-Anṣāriyyah, that she mentioned her khul’ from her husband Thābit ibn Qays ibn al-Shammās, and that the Messenger of Allah ﷺ said to Thābit, “Take from her,” so he took from her, and she remained among her family⁴⁰⁴.

They say, “No ṭalāq is mentioned in it.”

The answer: The decisive evidence that it is a ṭalāq is that ibn ‘Abbās narrated, “That the wife of Thābit ibn Qays came to the Prophet ﷺ and said: ‘O Messenger of Allah, I find no fault in Thābit ibn Qays regarding character or religion, but I dislike falling into kufr in Islam.’ So the Messenger of Allah ﷺ said: ‘Will you return his garden to him?’

⁴⁰⁴ Al-Muwatta’ Riwāyah Yaḥya 1634, 2/74: Ṣaḥīḥ

She said: ‘Yes.’ The Messenger of Allah ﷺ said: ‘Accept the garden and divorce her once.’”⁴⁰⁵

So this narration is an addition upon the mentioned earlier and the narration mentioned earlier does not negate what is in this one, so it is not permissible to abandon it.

If they say, “This narration you mention has come from other *ṭuruq* with the wording: ‘And let her go freely.’”

They mention for that what is narrated from Muḥammad ibn ‘Abd al-Raḥmān, that Rubayyi‘ bint Mu‘awwidh ibn ‘Afrā’, and she mentioned the *khul’* of the wife of Thābit ibn Qays from him and that his brother complained about him to the Messenger of Allah ﷺ. So the Messenger of Allah ﷺ sent for Thābit and said to him, “Take back what belongs to you and let her have her way.” He said: “Yes.” So the Messenger of Allah ﷺ ordered her to observe one menstrual cycle, then join her family⁴⁰⁶.

The answer: This is weak because Shādhān ‘Abd al-‘Azīz ibn ‘Uthmān is *majhūl*.

And they mention what ‘Ikrimah, the *mawla* of Ibn ‘Abbās narrated, “The wife of Thābit ibn Qays sought *khul’* from her husband, and the Prophet ﷺ made her ‘*iddah* one menstrual cycle.”⁴⁰⁷

This is weak, because it is *mursal*, and in it is ‘Amr ibn Muslim and he is nothing.

And they mention what has come about this incident about the Prophet ﷺ that he said, “Take some of her property then leave her.”⁴⁰⁸

This is weak because Abū ‘Amr al-Sadūsī is *majhūl*.

If they say, “The narration you mentioned from ibn ‘Abbās from the Prophet ﷺ in which is the mentioned about divorce, that exact

⁴⁰⁵ Ṣaḥīḥ al-Bukhārī 5276: Ṣaḥīḥ

⁴⁰⁶ Al-Mujtaba 3497: Ḍa‘īf

⁴⁰⁷ Al-Muṣannaf of ‘Abd al-Razzāq 11858, 6/506

⁴⁰⁸ Sunan Abī Dāwud 2228: Ḍa‘īf

same narration has come from other ṭuruq without the wording of divorce in it?”⁴⁰⁹

The answer: So what? It is not allowed to abandon the ziyādah of the thiqah.

And they claim, “The owner of this incident and story narrated it without the wording of divorce and it is all one story and one incident so the most reliable wordings must be taken.”

The answer: Those wordings have only come in the narrations you just mentioned and they are weak. And even if any would be authentic, then in the case of one story, same person, same incident, only the most specific details are taken if there is idṭirāb and there is no idṭirāb in these narrations as the meanings of letting her go and releasing her are some of the results of divorce. So the matter is entirely resolved and all praise is for Allah.

If they say, “Maybe the Prophet ﷺ did not mean with ‘divorce’ in this narration a real divorce.”

The answer: It is not allowed to affirm rare possibilities because that is mere conjecture against the apparent.

Some people claimed, “Khul’ is a faskh because there are rulings in khul’ that are not in ṭalāq, such as that there is in ṭalāq that the husband has the most right to divorce, and khul’ does not take the place of one of three divorces, and also there is no raj’ah in khul’ by ijmā’.”

The answer: These are all false claims for which there is no evidence. We have said that khul’ does not occur except by the divorce of the husband. If he does not want it, then no matter how much he oppresses her, no khul’ occurs. We have said that it is a divorce which takes one of the three divorces, and there is in it raj’ah for the husband, whether she likes it or not.

And as it is a ṭalāq, then Allah has mentioned the ‘iddah of ṭalāq, and that is then an addition that is not allowed to abandon.

⁴⁰⁹ Sunan ibn Mājah 2056: Ṣaḥīḥ

Issue: Is Khul' an Irrevocable (Bā'in) Divorce or Revocable (Raj'ī) Divorce?

Khul' is a revocable raj'ī divorce.

A group claimed, "It is an irrevocable divorce (ṭalqah bā'inah)."

The decisive evidence for our saying is that Allah has clarified the ruling of divorce, as He said, "And their husbands have more right to take them back." [al-Baqarah: 228]

And He said, "Retain them in kindness or part with them in kindness." [al-Ṭalāq: 2]

So it is not permissible to go against this.

And we do not find ever in the religion of Islam from Allah the Exalted and also not from His Messenger ﷺ, any irrevocable (bā'in) divorce in which is no raj'ah except three divorces in a row, or separate, or in the case of the one whom he has not touched, and no more than this. As for other than that, they are claims with no ḥujjah in them.

Issue: Giving her Back What She Gave Him

As for his returning what he took from her, he only took it so that she would not remain in his marriage bond. So as her intent is not fulfilled, then her wealth which she did not give except for that must be returned to her. Except if he makes clear to her that it is a divorce in which he has raj'ah, and she is pleased and wants that, then he does not return anything to her. And with Allah, the Exalted, is success.

Issue: What is Permissible to Give to Ransom (Fidā')

What suffices is anything.

A group said, "It is not permissible to ransom except with what he had given her as mahr, not more."

As for what is narrated by ibn Jurayj who said, “‘Aṭā’ said to me: ‘A woman came to the Messenger of Allah ﷺ and said: ‘O Messenger of Allah, I dislike my husband and I love separation from him.’ He said: ‘Will you return to him the garden he gave you as mahr?’ She said: ‘Yes, and more from my wealth.’ The Messenger of Allah ﷺ said: ‘As for more from your wealth, no, but only the garden.’ She said: ‘Yes.’ So he ﷺ decreed that upon the husband.”⁴¹⁰

And it was also narrated from ibn Jurayj from Abū al-Zubayr⁴¹¹.

These are weak as they are mursal.

And as for what is narrated by ‘Aṭā’, “That the Prophet ﷺ disliked taking in khul’ more than what he had given her.”⁴¹²

This is weak because it is mursal.

As nothing authentic specifies an amount in the texts it is obligatory to take the saying of Allah, “Then there is no blame upon them concerning that by which she ransoms herself,” [al-Baqarah: 229] upon its generality so any amount suffices.

And among the astonishing things is that some of them try to confuse matters with the saying of Allah, “And you have given one of them a great amount [as dowry], do not take [back] from it anything.” [al-Nisā’: 20]

And His saying, “And it is not permissible for you to take anything of what you have given them unless both fear that they will not be able to keep within the limits of Allah.” [al-Baqarah: 229]

Yes, it is not permissible for him to take anything from what he gave her, except if she gives it willingly. Then there is another ruling, “But if you fear that they will not keep within the limits of Allah, then there is no blame upon them concerning that by which she ransoms herself.” [al-Baqarah: 229] And this is general, and it is not permissible to specify some wealths by false claims.

⁴¹⁰ Al-Muṣannaf of ‘Abd al-Razzāq 11842, 6/502: Ḍa‘īf

⁴¹¹ Al-Muṣannaf of ‘Abd al-Razzāq 11843, 6/502: Ḍa‘īf

⁴¹² Al-Marāsīl of Abū Dāwud 237, 238: Ḍa‘īf

And some of them said, “Whoever takes more than what he gave has not released her in kindness.”

We say: There is no difference between him taking all that he gave her, or some of what he gave her, or most of what he gave her without right. If he is taking it without right then he never releases her in kindness. Or he takes all of that as Allah has allowed him to take it, then he is releasing her in kindness no matter what he takes from that. And if Allah allowed him to kill her, then he would have been doing good in that.

Issue: The Exact Situation in Which Khul’ is Allowed

We have said as it is in the verse, “But if you fear that they will not keep within the limits of Allāh,” [al-Baqarah: 229] that it must not occur except if there is fear that the rights that are obligatory will not be fulfilled.

Some people said, “Khul’ is not permissible except if he finds a man upon her belly.”

They mention the verse, “Except if they commit a clear immorality.” [al-Nisā’: 19]

We say: This is regarding taking her out from the houses during the ‘iddah, not in khul’.

And al-Shāfi‘ī said, “Khul’ is permissible for no reason at all, if they both want it, even if no rebellion, sins, aversion occurs or fear that they would not maintain the limits of Allah.”⁴¹³

And this is false, a saying without any decisive evidence.

⁴¹³ Al-Umm 5/211

Issue: A False Khul‘

As for the invalid khul‘, it is false. Some people have permitted it without any decisive evidence. How can a corrupt action be permissible, when Allah says: “Indeed, Allah does not correct the action of the corrupters.” [Yūnus: 81] If he takes her ransom wealth, which is not permissible for him to take it, her wealth must be returned to her, and she returns to him, and she cannot go away and also not her wealth by him taking it. The case must be returned to as if it did not happen. This is that for which nothing else is permissible. And with Allah, the Exalted, is success.

Issue: The Woman Offers Khul‘ That is Unknown

Whoever offers khul‘ that is unknown, it is false, because he does not know what is due to him from her, and she also does not know it, so it is a corrupt contract. Every divorce that is not valid except with the validity of what has no validity then it is not valid. And as it is not valid he did not divorce her at all.

The wonder of those that argue against this is that they mention the verse, “There is no blame upon them for what they ransomed themselves with.” [al-Baqarah: 229].

And they say, “But this is general?”

We say: Yes, it is general regarding what is permissible to contract and own, not regarding the prohibited. Otherwise, it would be permissible for a man to ransom himself from his wife by committing zinā with her whenever he wishes, by wine, neglecting prayer, and the like, which is impossible.

Issue: Khul‘ Offered For a Limited Act

Khul‘ in exchange for a Limited act is permissible because it falls under His words, “There is no blame upon them for what they ransomed themselves with,” [al-Baqarah: 229] and this is if that act is permissible, then the likes of a compensation such as in a wage (ijārah), or other permissible acts are permissible and is encompassed within this generality. And with Allah, the Exalted, is success.

Issue: Maintenance After the Occurrence of a Valid Khul‘

Whoever makes a valid khul‘ of his wife, then the obligation to provide her maintenance, clothing, and lodging during her ‘iddah is not omitted except if it is a divorce thrice in a row or three separate divorces. And by that he is still obligatory to any remaining part of the mahr, whether it is much or a lot.

Issue: Khul‘ on Behalf of the Insane or Non-Adult

It is not permissible for a father, walī, or anyone else to offer khul‘ on behalf of an insane person or a non-adult.

The decisive evidence for this is the saying of Allah, “No soul earns except against itself.” [al-An‘ām: 164]

And He says, “Do not consume one another’s wealth unjustly, except by trade done mutually with consent.” [an-Nisā’: 29]

So, a father, walī, or ruler offering khul‘ on behalf of a non-adult or adult is earning through another’s right, which is not permissible. And a husband taking her wealth without her consent is consuming wealth by oppression, and this is prohibited. And with Allah, the Exalted, is success.

Issue: Khul‘ in Exchange for Exemption From Maintenance

It is not permissible for a woman to offer khul‘ in exchange for her husband being exempt from the obligation of paying her maintenance during her pregnancy or for the nursing of her child. All of that is false because it is about an unknown amount, it can increase or decrease and because it is not yet obligatory upon him. Offering khul‘ in exchange for something she does not own is invalid and oppression.

One of the wonders of the world is that Abū Ḥanīfah permitted a woman that is a Muslimah to offer khul‘ with wine or swine to her Muslim husband⁴¹⁴.

The Ruling of Mut‘ah (Parting Gift)

Issue: The obligation of Mut‘ah

Mut‘ah is obligatory upon everyone that divorces, whether he divorces her once, twice, or thrice, or after three divorces, whether he had intercourse with her or not, whether he stipulated her dowry or not, he must grant her the Mut‘ah. The same is with the woman who ransoms herself for khul’. The ḥākim compels him to that, whether he likes it or dislikes it. There is no Mut‘ah upon the one whose marriage faskh occurs without divorce. And the obligation of Mut‘ah is not omitted from the one divorcing by him taking her back by raj‘ah during the

⁴¹⁴ Al-Jāmi‘ al-Ṣaghīr of Muḥammad ibn al-Ḥasan al-Shaybānī pg. 214 | Mukhtaṣar Ikhtilāf al-‘Ulamā’ 2/470 | Al-Mabsūṭ 6/191

‘iddah, and also not his death, or her death. The Mut‘ah belongs to her or to her heirs from his estate, and it is taken alongside the creditors if he had debts. If there is difficulty in providing the Mut‘ah, the judge demands it against the wealthy one, the one who has no surplus beyond the sustenance of himself and his family and the one with no means, only that what is able to and the obligation is anything that is considered good, and the more the man is able the higher the amount becomes, there is no limited amount for it other than that it must be considered good

The decisive evidence of this is the saying of Allah, “And for the divorced women is a provision in a fair manner, an obligation upon the muttaqīn.” [al-Baqarah: 241]

So Allah made it general for every divorced woman, without specifying out anyone, and made it obligatory upon every muttaq for her.

A group said, “Mut‘ah is not obligatory.”

And others said, “Mut‘ah is not obligatory except upon the muttaqīn and the muḥsinīn.”

And from the wonders of the world is their argument, “Allah only made it obligatory upon the muttaqīn (those that fear Allah) and the muḥsinīn (the doers of good), and He did not oblige it on other than these two so it is not allowed to transgress what is mentioned to what is not mentioned.”

The answer: Every Muslim who is upon the face of the earth, by his saying, “Lā ilāha illā Allāh, Muḥammadun Rasūl Allāh,” and by his īmān, he is among the muttaqīn by that statement of his and among the muḥsinīn. And Allah can make him abide eternally in the Fire if he does not become Muslim. So every Muslim in the world is a muḥsin, a muttaqī, from among the muḥsinīn and the muttaqīn. And if the word ‘muḥsin’ and ‘muttaqī’ would not occur except on the one who does iḥsān and taqwā in every single action of him, then there would be no muḥsin and no muttaqī upon the earth after the Messenger of Allah ﷺ,

as there is no way but that that everyone after him as shortcomings and misdeeds in which he is not be among the muḥsinīn or the muttaqīn.

So upon that the words of Allāh, “An obligation upon the muḥsinīn,” [al-Baqarah: 236] and, “An obligation upon the muttaqīn,” [al-Baqarah: 241] would be empty, vain, and false and it is not permissible for anyone to believe that. And there is no difference between His saying, “From the muḥsinīn,” [al-A‘rāf: 56] and, “From the muttaqīn,” [al-Mā‘idah: 27] and His saying, “From the Muslimīn,” [Yūnus: 72] and, “From the muttaqīn,” [al-Nisā’: 95] the meaning in all of that is one, and there is no difference.

Some people claim that the verse, “And if you divorce them before you have touched them, but you have already specified for them an obligatory gift,” [Al-Baqarah: 237] abrogates the verse, “And for the divorced women is a fair provision.” [Al-Baqarah: 241].

We say: This is false, there is nothing that indicates the abrogation of the verse, it opposes nothing what is in it.

As for those who say that mut‘ah is only obligatory if the woman was not touched by the husband or if no mahr was mentioned, they mention the verse, “There is no blame upon you if you divorce the women before you have touched them or specified for them an obligation, and provide for them a fair provision.” [Al-Baqarah: 236]

The answer: This is false, if only this verse existed then yes. But the words of Allah, “And for the divorced women is a fair provision,” [Al-Baqarah: 241] encompass every divorced woman in general. And Allah did not say in the first verse that they mention that there is no mut‘ah for other than them.

As for the amount of mut‘ah, Allāh said, “And make a provision for them, the wealthy according to his capability and the poor according to his capability, according to what is fair, an obligation upon the doers of good.” [al-Baqarah: 236]

If Allah had appointed the mut‘ah to the man providing the mut‘ah it would be obligatory to stop there and not transgress it. But Allah obliged it upon the wealthy and the poor according to their

ability. So it is an obligation that the provision of the wealthy is not the same as the provision of the poor, there is no other way. And as no limit has come about it from the Messenger of Allāh ﷺ. Then the obligation is anything that is considered fair no matter what and how it is and it is then only one obligation.

And Allah said, “Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allāh has given him. Allāh does not charge a soul except [according to] what He has given it.” [al-Ṭalāq: 7]

The Rulings of Raj‘ah

Issue: The Description of Raj‘ah

And from raj‘ah is that a man divorces his wife once or twice, and she completes her waiting period, then marries another husband who has intercourse with her, and then he dies or divorces her, then she returns to her first husband who had divorced her, and he then divorces her again, she is not permissible for him except if she marries another husband who has intercourse with her if he had already divorced her twice before that. But if he had only divorced her once, then one divorce remains for him, which is the third.

A group says, “The man she marries after the first nullifies the divorces of the first husband.”

We say: It does not nullify the previous divorces, what is nullified is only the prohibition that occurs upon the completion of three divorces, whether in a row or separated divorces, and nothing

else. She does not become prohibited by two divorces or by one divorce and there is no decisive evidence for the nullification of those divorces.

The only ḥujjah in this matter is the saying of Allah, “And if he divorces her (a third time) then she is not permissible to him thereafter until she marries another husband.” [al-Baqarah: 230]

So it is not permissible to transgress the limits of Allah, the Exalted, and all qiyās is false. And by Allah, the Exalted, is success.

Issue: The Revocably Divorced Woman Is a Wife

We have said the woman divorced with a revocable divorce is still a wife to the one who divorced her as long as her ‘iddah has not ended. They inherit from each other. His divorce applies to her, and his *īlā’*, his *ḡihār*, and his *li‘ān* if he accuses her. He is responsible for her maintenance, her clothing, and her housing. As she is his wife, it is permissible for him to look at her just as he used to look at her before divorcing her, and to have intercourse with her, no text has come prohibiting him from any of that. And Allah, has named him her ‘husband’ as He says, “And their husbands have more right to take them back in that [period.]” [al-Baqarah: 228] If he has intercourse with her, that does not count as a return (*raj‘ah*) to her until he pronounces the *raj‘ah* and brings witnesses, and informs her of that before the completion of her waiting period. If he takes her back without witnesses, then it is not a *raj‘ah*, because of the saying of Allah, the Exalted, “And when they have reached their term, then either retain them honorably or separate from them honorably, and call to witness two just men from among you.” [al-Ṭalāq: 2] Allah made a difference between the *raj‘ah*, divorce, and the witnessing, so it is not permissible to isolate some of these from the others. So whoever divorces without bringing two upright witnesses, or takes back without bringing two upright witnesses, has transgressed the limits of Allah, the Exalted. And the Messenger of Allah ﷺ said, “Whoever does an action that is not in accordance with our matter, it is rejected.”

If those that oppose this mention the verse, “And take witnesses when you make buy and sale.” [al-Baqarah: 282]

And the verse about a debt that is delayed to a specified time, “And bring two witnesses from among your men; and if there are not two men, then a man and two women.” [al-Baqarah: 282]

If they say, “Why do you validate the loan that is delayed to a specified time and a sale when no witnesses were brought upon it?”

And if they mention the verse, “Then when you deliver their property to them, bring witnesses upon them.” [al-Nisā’: 6]

If they say, “So why did you validate the handing over of wealth to the orphan when he reaches discernment without witnesses?”

We say: We do not validate his claim of having delivered the wealth until he brings evidence. And we rule that the oath is upon the orphan if the mawla does not bring evidence that he had indeed delivered to him his wealth. But we rule him sinful before Allah if he took an oath, invalidating it only.

Just as we rule the woman, in the case where the husband did not bring evidence of him divorcing her or him taking her back with raj‘ah a sinner before Allah if she took an oath falsely, while knowing that he had divorced her or taken her back with raj‘ah.

As for us validating the sale that is delayed to a specific time and other, even if no witnesses were brought upon it, it is because of the saying of the Messenger of Allah ﷺ, “They remain upon khiyār as long as they have not separated and when they separate, or one of them gives the other the choice and he chooses the sale, then the sale is concluded.”

We have mentioned this in the book about buyū’ (sales) from compilation of ours. And praise be to Allah, Lord of the worlds. And in all of that, he is a sinner before Allah if he does not bring witnesses in the delayed sale and others, or in delivering the wealth to the orphan when he reaches discernment, or in his divorce, or in his raj‘ah as he does not act as Allah has ordered.

There has not come anything establishing that intercourse counts as a raj'ah not from the Qur'ān and also not from the Sunnah. And there is no disagreement that raj'ah by speech is raj'ah. So it is not a raj'ah except by what is authentically established as raj'ah.

And Allah said, "Retain them with ma'rūf." [al-Ṭalāq: 2]

And with 'ma'rūf' (known) is what is known ('urifa) from the intent of the one retaining and taking her back, and that can only be known by speech. And with Allah, the Exalted, is success.

A group mentions the verse, "When they reach their term, then retain them in kindness." [al-Ṭalāq: 2]

They say about the verse, "It only means: 'approaching the completion of the term.'"

And this is a mistake and false without doubt because it is a claim about Allah that He intended what He did not tell us or that He intended without His Messenger ﷺ telling us about it.

And Allah said, "And that you associate with Allah that for which He has not sent down authority, and that you say about Allah that which you do not know." [al-A'rāf: 33]

And also if what they say would be correct, then there would be no retaining them except near the end of the waiting period and this is something that no one says and there is no evidence for it whatsoever.

The meaning of, "When they reach their term," [al-Ṭalāq: 2] is without doubt the end of their waiting period which is the 'iddah.

The decisive evidence for this is that the beginning of the waiting period to its end is all a time for him to take her back and retain her.

As for our saying that if he took her back with raj'ah without witnesses, or brought witnesses but did not inform her until her waiting period had ended, whether he was absent or present, while he had divorced her, informed her, and brought witnesses for that divorce, then she becomes separated from him, and he has no raj'ah over her. A new marriage is required if they want to marry with her consent, and a walī and a new mahr, whether she had remarried or not, whether the second

husband had entered upon her or not. But if the news reaches her while she is still in her waiting period, then it is a valid raj'ah.

The decisive evidence for this the saying of Allah, "They seek to deceive Allah and those who believe, but they deceive only themselves." [al-Baqarah: 9]

And the saying of Allah, the Exalted, "Do not harm them so as to oppress them." [al-Talāq: 6]

And this is the essence of harm.

And the Messenger of Allah ﷺ said, "Whoever does an action that is not in accordance with our matter, it is rejected."

So him causing harm is rejected and invalid.

And also Allah has named raj'ah 'retention in kindness'. As He said, "When they reach their term, then retain them in kindness or separate from them in kindness." [al-Talāq: 2]

So raj'ah is retaining, and it cannot be by the naṣṣ of the speech of Allah except with ma'rūf. And ma'rūf is to inform her by the meaning of the word, and to inform her family if she is a non-adult or insane.

If he does not inform her, then he has not retained her with ma'rūf but with munkar, as he has withheld from her the rights of marriage from maintenance, clothing, housing, and the division of nights. This is a corrupt and invalid retention. It is only valid if he brings witnesses and informed her, then it is with ma'rūf.

And likewise Allah said, "And their husbands have more right to take them back in that, if they desire reconciliation. And they (the wives) have rights similar to those against them, according to what is fair." [al-Baqarah: 228].

The husband 'ba'l' has only more right to take her back if he desires reconciliation by the naṣṣ of the Qur'ān. And whoever conceals the taking back from her, or takes her back in a way that does not reach her, then he with certainty did not desire reconciliation, but corruption. So that is not a taking back, and not a raj'ah at all.

Issue: The Conclusion

We will gather here what we may have mentioned scattered before and that is that there is no divorce in which the one divorcing does not have the right of raj'ah while she is still in her waiting period ('iddah), except in the case of a triple divorce whether that is pronounced all together in a row or separately, or in the case of divorcing a woman whom the man divorcing her has not touched her, whether he divorced her once, twice, or thrice. In every case other than the triple divorce, if he and she both consent, they can initiate a new marriage with a walī and a new mahr. This is the ruling of all forms of faskh. As for the divorce of the copulated wife, whether once or twice: the man divorcing her has the right to take her back, whether she likes it or dislikes it, without a mahr and without a walī, but only with witnesses. And this is a matter about which there is no disagreement. And with Allah, the Exalted, is success.

The Rulings of the ‘Iddah

Issue: The Types of Waiting Periods (‘Iddahs)

The waiting periods are of three types: either from divorce in a marriage in which he copulated her even once or more. Or from death, whether he copulated her or not. And either the freed slave woman (mu‘taqah) if she chooses herself and separation from her husband, then this specifically, unlike the remaining of the forms of annulment: her ‘iddah is the ‘iddah of a divorced woman. As for the other forms of faskh, and for the woman whom her husband never copulated, then there is no ‘iddah for any of them. They can be married immediately at the exact moment of faskh or the moment of divorce.

The decisive evidence of this is that the ‘iddah of divorce and death is mentioned in the Qur’ān and likewise omitting the obligation of the ‘iddah from the woman who is divorced before she is touched in that marriage.

As for the freed slave woman who chooses faskh of her marriage: as ibn ‘Abbās narrated, “The husband of Barīrah was a black slave named Mughīth. The Messenger of Allah ﷺ gave her the choice [to separate], and he ordered her to observe a waiting period.”⁴¹⁵

If there had been an ‘iddah other than what was mentioned in the Qur’ān, the Messenger of Allah ﷺ would have clarified it without doubt. And we only said that it is ‘iddah of the divorced woman because it is an ‘iddah from a living husband, not a dead one. So it is established, as he ﷺ ordered her to observe an ‘iddah after separating from him while he was alive, that this is without doubt the waiting period of separation from the living.

⁴¹⁵ Sunan Abī Dāwud 2232: Ṣaḥīḥ

As for the other forms of faskh, whether from a valid marriage or from a corrupt contract, there is no 'iddah in any of that, because no Qur'ān and no Sunnah obliges it.

And divorce cannot occur except in a valid marriage. Likewise, there is no 'iddah from the death of one whose contract was invalid, because Allah did not oblige the 'iddah of divorce or death except from a husband, and whose contract is invalid is not a husband. So as he has no divorce, there is no 'iddah from separating from him. And as he is not a husband, there is no 'iddah from his death.

Allāh said, "And whoever transgresses the limits of Allah has surely wronged himself." [al-Ṭalāq: 1]

Issue: 'Iddah is Not Because of Fear of Pregnancy

The decisive evidence of this is that no text ever indicates this and that those who oppose us in this matter do not oppose us that 'iddah is obligatory for the non-adult girl that has been touched, meaning the one that cannot bear a child, and the very old woman who cannot bear a child, in both divorce and death. And if they would oppose us regarding divorce in the case of the non-adult girl, then the saying of Allah ﷻ, "And those among your women who have despaired of menstruation, if you are in doubt, then their 'iddah is three months; and also for those who have not menstruated," [al-Ṭalāq: 4] would be decisive for the correctness of our saying and the falsehood of theirs. And the meaning of His ﷻ saying, "If you are in doubt," [al-Ṭalāq: 4] is only, "If you are uncertain what her ruling is," nothing else is permissible because those women who have despaired of menstruation, no one doubts that there is no suspicion of pregnancy with them. And likewise, they do not disagree that the eunuch (khaṣī) who still has his other private organ enough to penetrate that his wife must observe 'iddah, while there is no doubt that he will never have offspring. And likewise, they do not disagree that if a man had intercourse with his wife once, then was absent from her for many years, then later divorced her, that she is still

obliged to observe ‘iddah. While there is no doubt that she is not pregnant; and if ‘iddah would be because of fear of pregnancy, then one menstrual cycle would suffice. And with Allah ﷻ is success.

Issue: The ‘Iddah of the Divorced Woman Who Has Been Touched and Menstruates

The ‘iddah of the divorced woman who has been touched and menstruates is three qurū’. And that is the remaining time of the state of purity (ṭuhr) in which she was divorced, even if it is a few seconds, then the menstruation that follows that remaining state of purity, then a second complete purity, then the menstruation that follows it, then a third complete purity. When she then sees the first trace of blood from that menstruation, her ‘iddah is completed, and she can marry at that point if she wishes.

A group said, “Aqrā’ which is the plural of qur’ are menstruations only not the state of purity.”

Everyone clings unto the verse, “And the divorced women shall wait concerning themselves for three qurū’, and it is not lawful for them to conceal what Allah has created in their wombs.” [al-Baqarah: 228]

Qurū’ is the plural of qur’, and qur’ in the language of the Arabs in which the Qur’ān was revealed occurs on purity and menstruation⁴¹⁶.

If they mention the narration of ‘Ā’ishah, from the Prophet ﷺ who said: “The divorce of a slave woman is two divorces, and her ‘iddah is two menstruations.”⁴¹⁷

This is weak because of the weakness of Muḏāhir ibn Aslam.

And this exact same wording is narrated about ibn ‘Umar from the Prophet⁴¹⁸.

⁴¹⁶ Al-Kāmil fī al-Lughah 1/220 | Gharīb al-Ḥadīth pg. 53

⁴¹⁷ Sunan Abī Dāwud 2189: Ḍa‘īf

⁴¹⁸ Sunan ibn Mājah 2079: Ḍa‘īf

said: The Messenger of Allah ﷺ said: “The divorce of a slave woman is two, and her ‘iddah is two menstruations.”

This is weak because of the weakness of ‘Amr ibn Shabīb al-Muslī and the weakness of ‘Aṭīyyah ibn Sa’d al-‘Awfī.

If someone then mentions the narration from the Messenger of Allah ﷺ, that he said to the woman with istahāḍah, “When your qur’ comes to you, do not pray, and when the qur’ passes, then purify yourself and pray until the next qur’.”⁴¹⁹

This is weak because al-Mundhir ibn al-Mughīrah al-Madanī is majhūl.

And if they mention the established narration from him ﷺ that he ordered her to leave prayer for the time of her aqrā’ and her menstruations⁴²⁰.

We say: We do not deny that menstruation is called qur’, just as you do not deny that purity is called qur’. Our difference is only about which of these is intended in the statement of Allah, “Three qurū’.” [al-Baqarah: 228]

And they say, “Allah ﷻ only ordered divorce of women for the beginning of their ‘iddah. So if qur’ would be purity, then divorcing during purity would be divorcing within the ‘iddah.”

We say: This is a mistake in your ruling and in building upon a valid premise. And yes, Allah ﷻ ordered divorce only for the beginning of the ‘iddah. So if the ‘iddah which is the aqrā’ would be menstruations, then there would be a period of time between the divorce and the beginning of the ‘iddah during which she is not in ‘iddah, and this is invalid.

So everything they argue by is invalid, and our saying remains. We then find the ḥujjah for it in what ibn ‘Umar narrated, “That he divorced his wife while she was menstruating, so ‘Umar asked the Messenger of Allah ﷺ about it, and the Messenger of Allah ﷺ said: ‘Order him to take her back, then let him keep her until she becomes

⁴¹⁹ Sunan Abī Dāwūd 280: Ḍa‘īf

⁴²⁰ Al-Mujtaba 2303 | Ṣaḥīḥ Muslim 334, 64

pure, then menstruates, then becomes pure. Then if he wishes he may keep her, and if he wishes he may divorce her before touching her. That is the 'iddah which Allah ﷻ has ordered that women are divorced for.”⁴²¹

So the Messenger of Allah ﷺ indicated purity and informed that it is the 'iddah which Allah ﷻ ordered women to be divorced for. So it is established that qur' is purity.

And also the 'iddah is obligatory immediately after divorce without any delay, it is then established that it is the purity (ṭuhr) directly connected to the divorce, not the menstruation (ḥayḍ) which is not connected to the divorce.

And if qur' would be menstruation, then it would oblige according to their own principles, when someone divorces his wife while she is menstruating, that menstruation must count as one qur'.

Whichever of the two sayings was intended by Allah ﷻ, whether aqrā' is purities or menstruations, our saying encompasses them both. Because divorce occurs in purity, and that is a qur', then the second purity, then the third. Between the first and second purity there is menstruation, and between the second and third purity there is menstruation, and then part of the menstruation of the third.

And we have said that some of menstruation is menstruation, some of purity is purity, and some qur' is a qur'. So they are three aqrā' in every case. And we say if he divorces her three times while she is menstruating, then she counts that menstruation, then the purity that follows it, then the second menstruation, then the second purity, then the third menstruation. When she sees purity from it that is the third purity, she becomes permissible by that for marriage. And likewise. The same applies regarding the 'iddah of a slave woman who is freed and then chooses separation from her husband if she is menstruating at that time, there is no difference. And likewise is regarding the woman divorced thrice during a purity in which he had intercourse with her,

⁴²¹ Sunan Abī Dāwud 2179: Ṣaḥīḥ

and the slave woman who is freed and chooses separation from her husband: both of them count that purity as one qur'.

Issue: He Divorces Her in Her 'Iddah Before It is Completed

After he divorced her and she is in her 'iddah, then if he divorces her again, in her 'iddah, before it was completed, with an irrevocable (bā'in) divorce, and that 'iddah was not because of a triple divorce in a row, or a third divorce separately, then she must begin the 'iddah new from the start. If, after two divorces, he divorces her a third time, then she must also begin the 'iddah new with no other way. And likewise, if he takes her back during her 'iddah with raj'ah, whether he has intercourse with her or not, and then divorces her, she must begin the 'iddah new with no other way.

Our ḥujjah here is that Allah only omitted the 'iddah from the one divorced who not touched only, and He made it obligatory upon the divorced woman who has been touched. And Allah ordered the one who divorces to divorce for the 'iddah, and He made the 'iddah of the one who menstruates three qurū', and the one who does not menstruate no matter the reason three months.

And Allah ruled that she remains his wife as long as her 'iddah from him has not ended, so they inherit from each other, and his divorce affects her. So if he divorces her a second time, he is divorcing his wife who has been touched by him in that marriage without any doubt, so she must begin the 'iddah immediately after it.

And it is false for anything from the 'iddah to precede the divorce, just as it is false that a touched wife can be divorced without an 'iddah. Or that a touched wife's 'iddah can only one qur' or two. So whoever claims that the 'iddah is connected to the previous falls into these false conclusions with no other way.

And likewise it is impossible that a wife who has been taken back with raj‘ah must continue upon an ‘iddah that was nullified by the act of him taking her back. As it is false that she can remain a wife who has been taken back, while after the revocation she is still in ‘iddah. And with Allah, Exalted, is all success.

Issue: The Divorced Woman is Pregnant From the One Who Divorced Her, or From Zinā, or Rape

If the divorced woman is pregnant from the one who divorced her, or from zinā, or by rape, her ‘iddah ends with the delivery of her child even if it occurs immediately after her husband’s divorce, or sooner, or later and this child is the last one in her womb. When she gives birth, as we mentioned, or miscarries, her ‘iddah is completed and she is free to remarry. And likewise is if her husband passes away while she is pregnant from him, or from zinā, or by rape, her ‘iddah ends with the delivery of the last child in her womb even if it occurs after the husband’s death and she is free to marry whomever she wishes. The same applies if she miscarries with no difference.

The decisive evidence for this are the words of Allah, “And those who are pregnant, their ‘iddah is until they deliver their burden.” [al-Ṭalāq: 4]

So Allah did not specify whether the pregnancy is from her husband or not; and it is the same whether the husband has copulated her or not because Allah said as we mentioned.

Allah also said, “O you who believe! When you marry the believing women and then divorce them before you touch them, there is no ‘iddah that you need to count for them.” [al-Aḥzāb: 49]

It is possible to make this an exception from the previous, so the intended meaning of, “Those who are pregnant, their ‘iddah is until they deliver their burden,” is except for those not copulated and who are pregnant either from you by using her labia or from others, so those

pregnant women do not have the 'iddah all other pregnant women have.

It is also possible that the first ruling is an exception from this verse, so the intended meaning would then be, "When you divorce them before you touch them, there is no 'iddah except for those who are pregnant from you or from others."

So there is in the first verse that every pregnant woman's 'iddah is until she gives birth.

And in the second that if a woman is divorced before she is copulated that there is no 'iddah at all.

In the first exception all pregnant women must wait until delivery except those divorced before copulating them so if she is pregnant by means other than copulating.

And the second exception is that all divorced women before being touched have no 'iddah except if she is pregnant then she must wait for delivery.

So it is obligatory to look at which exception is the truth. Allah has guaranteed clarification of this in the rulings He revealed to us.

So we find the narration of 'Abd Allāh ibn 'Umar about his wife's divorce, which we mentioned in the first issue of divorce in our Book, there is in it that the Prophet ﷺ said to him, "Let him take her back (raj'ah) and then divorce her while she is pure or pregnant from him."⁴²²

There is also in it, "When she becomes pure, let him divorce her or keep her, and the Messenger of Allah ﷺ recited: 'O Prophet, when you divorce women, divorce them for the completion of their 'iddah.'"⁴²³

So it is established that divorcing a pregnant woman is permissible in general, because this ruling comes from him ﷺ teaching for every man that divorces until the Day of Resurrection, whether the pregnancy is from him or from someone else.

⁴²² Ṣaḥīḥ Muslim 1471, 5: Ṣaḥīḥ

⁴²³ Al-Muṣannaf 10960, 6/309: Ṣaḥīḥ

He ﷺ did not specify one pregnancy from another pregnancy; and this state is the beginning of her 'iddah. So the 'iddah is obligatory upon her as we mentioned, and it is not permissible for this ruling to be omitted except with certainty and there is no certainty in its omission except in the case of a divorced woman whom he has not touched, and she is not pregnant. And as it is established that the 'iddah is obligatory upon her, it is obligatory that he has the right of raj'ah over her as long as she remains in the 'iddah from his divorce. He is also obligated to provide maintenance, they inherit from each other, his divorce reaches her, and his zihār and li'ān all occur on her, as Allah says: "Their husbands have a better right to take them back in that." [al-Baqarah: 228]

And as He says: "So retain them in kindness or release them in kindness." [al-Ṭalāq: 2]

And with Allah, Exalted, is all success.

Similarly, we say: If he divorces her and her 'iddah is by aqrā' or months, then she becomes pregnant before the completion of the 'iddah, whether from him or from someone else, by zinā or rape, her 'iddah changes to the time of delivery of that child. When she gives birth, her 'iddah is complete.

And likewise is if her husband dies and she becomes pregnant during her 'iddah from his death, whether by zinā or rape, her 'iddah changes to the 'iddah of the pregnant woman, ending with the delivery of the child. All of this falls under the generality of Allah's words: "And those who are pregnant, their 'iddah is until they deliver their burden." [al-Ṭalāq: 4]

The Messenger of Allah ﷺ preceded the delivery of the child in the case of widowhood over the 4 months and 10 days, as Umm Salamah narrated, "That Subay'ah delivered a child a few days after her husband's death, and the Messenger of Allah ﷺ ordered her to marry."⁴²⁴

⁴²⁴ Al-Mujtaba 3515: Ṣaḥīḥ

As for our statement, “The last child in her womb,” it is because of the words of Allah, “Their ‘iddah is until they deliver their burden.” [al-Ṭalāq: 4]

So, as long as there remains anything of her pregnancy in her womb, she has not yet delivered her child.

If there remains even a small part of the placenta, she is still in ‘iddah, because it is part of the child that is born with the delivery, it makes no difference; it is counted as part of the pregnancy.

Issue: If the Fetus Dies in the Womb of the Woman in ‘Iddah

If the fetus dies in her womb, her ‘iddah does not end until she expels all of it, even if nothing remains of it except a finger or part of it. This is because she has not expelled all of it, so she has not delivered her pregnancy. And with Allah, the Exalted, is success.

Issue: The Divorced Woman Who Does Not Menstruate and is Not Pregnant, and is Copulated

If the divorced woman does not menstruate because of being a non-adult, or too old, or any other reason, and she is not pregnant, and she is copulated, then her ‘iddah is three months, starting from the time the divorce reaches her or her family if she is young. This by the words of Allah, “And those among your women who have despaired of menses, if you doubt, their ‘iddah is three months, and so for those who have not menstruated.” [al-Ṭalāq: 4]

Issue: If He Divorces Her at the Beginning of the First Night of the Month

If he divorces the woman that does not menstruate her at the beginning of the first night of the month, at the exact time of sunset, she counts her 'iddah until the crescent of the fourth month appears. When it appears, her 'iddah is complete. And if he divorces her before or after that, then it is obligatory upon her to observe 'iddah for eighty-seven nights along with their like from the days, fully, until the same time at which the 'iddah became binding upon her. No fraction of a day and also no fraction of a night can be neglected, because it is not permissible for there to be any difference between the beginning of her 'iddah and the time it became binding upon her, not if it is less or much. When she completes what we have mentioned, her 'iddah is over, because the Messenger of Allah ﷺ said, "The month is twenty-nine [days]." ⁴²⁵

If it is said, "But she has a certain 'iddah binding upon her, so she does not leave from that except with certainty?"

We say: This is a corrupt assumption. What instead has become binding upon her is an 'iddah established with certainty by the revelation of Allah to the Messenger of Allah ﷺ which is with certainty established through revelation which we have mentioned, not any 'certainty' from a false assumption or the saying of someone. So we do not leave that except by the clarification of the Messenger of Allah ﷺ, which is the true certainty.

And he ﷺ has clarified that the month is twenty-nine days. So it is not permissible to add anything on that by waswasah for which is no asl. Allah, the Exalted, says, "And your Lord was never forgetful." [Maryam: 64]

⁴²⁵ Ṣaḥīḥ al-Bukhārī 1907: Ṣaḥīḥ

Issue: If the Pregnant Divorced Woman or the Woman Whose Husband Died Miscarries

As we have said: If the pregnant divorced woman, or the woman whose husband has died, she becomes permissible for marriage. The limit of this ruling is if she miscarries at least an ‘alaqah (a clot of blood/embryo) or more. As for if she miscarries only a nuṭfah (sperm drop) before it becomes an ‘alaqah, it has no effect; her ‘iddah does not end because of this.

The decisive evidence for this is that ‘Abd Allāh ibn Mas‘ūd narrated, “The Messenger of Allah ﷺ said: ‘Verily, the creation of one of you is gathered in the womb of his mother for forty days, then it becomes an ‘alaqah.’”⁴²⁶

And Ḥuḍayfah ibn Asīd al-Ghifārī narrated, “I heard the Messenger of Allah ﷺ say: ‘When it passes forty-two nights as a nuṭfah, Allah sends an angel to it to form it, and to create its hearing, sight, skin, flesh, and bones, then He says: ‘O Lord, male or female?’”⁴²⁷

The meaning this is the creation of the complete form which, after that, is divided into hearing, sight, skin, flesh, and bones. So it is established that the first stage of the creation of the child is as an ‘alaqah, not as a nuṭfah, which is merely fluid.

Issue: A Woman Who Has Never Menstruated is Divorced, Then Menstruates Before Completing Her ‘Iddah

If a woman who has never menstruated is divorced and then menstruates before the completion of her ‘iddah, whether immediately

⁴²⁶ Ṣaḥīḥ Muslim 2643, 1: Ṣaḥīḥ

⁴²⁷ Ṣaḥīḥ Muslim 2645, 3: Ṣaḥīḥ

after her divorce or at the end of the month, or at any time in between, she continues her 'iddah in months. When she completes them, she becomes permissible for marriage, without considering the menstruation itself. And likewise is if she becomes pregnant from her husband or from another man after her divorce, or if before the end of the three months she begins the 'iddah of death fully, the same ruling applies.

The decisive evidence for this is the words of Allah, "And those of your women who have despaired of menstruation, if you doubt, their 'iddah is three months, and those who have not menstruated." [al-Talāq: 4]

Allah has only obliged the three-month 'iddah upon those to whom the 'iddah of divorce becomes binding, so what Allah obliges does not come invalid by false claims.

If it is said, "Allah has obliged aqrā'."

And they mention the verse, "And divorced women shall wait concerning themselves for three qurū'." [al-Baqarah: 228]

And also the verse, "And those who are pregnant, their term is until they deliver their burden." [al-Talāq: 4]

And if they say about these, "And this is a divorced woman?"

We say: Allah only obligated this upon women who have aqrā' and upon those who are pregnant. This woman, when the 'iddah of this divorce becomes obligatory, is in certainty among those who have despaired of menstruation or those who have not menstruated. She is not among those with aqrā' and also not among the pregnant.

It is false and impossible to oblige the 'iddah of qurū' for someone who does not have qurū' at the time the 'iddah becomes obligatory, or to oblige the 'iddah of pregnancy for someone who is not pregnant at that time. And it is also false to place a time between the obligation of 'iddah from divorce or death and time that is not from the 'iddah because of the saying of the Messenger of Allah ﷺ said, "Divorce them for the beginning of their 'iddah," as mentioned before.

And also, qur' is only what is between two menstruations from tuhr. So her state before she menstruates, or after she has ceased menstruating, is not qur'. It is then false to have 'iddah for the qur' when she is not divorced for a beginning qur', and the child from him is attributed to the husband, because she is still his wife. We have said that intercourse with her is not raj'ah and also not a divorce from which the 'iddah begins.

Issue: The 'Iddah of the Mustahāḍah

As for the mustahāḍah that is not able to tell if her blood is menstruation or not and she also does not know the days of her menstruation: If she is had no menstrual days before that, then her 'iddah is three months, because she has never had a valid menstruation at all. She is counted among those who never menstruated. If she is among those who had a known menstruation but has forgotten it, or forgotten its duration or timing, then she must wait for a period in which she is certain that she has completed three periods of purity and two menstruations, and is in the third, with no other way. And when the amount we mentioned passes, her 'iddah is complete, because she is among those with menstrual cycles (dhawāt al-aqrā') without doubt, so she must complete three qur'. As for when she can distinguish between the two, her matter is clear. And likewise is the woman whose blood cannot be distinguished except that she knows her days, she counts her 'iddah according to the days she used to menstruate and the days she used to be pure. We have mentioned the decisive evidence for this in Kitāb al-Ṭahārah.

As for the woman that doubts if her 'iddah is by menstrual cycles or by months and she completed it, yet she thinks that she might be pregnant but is not certain, and she is not certain that she is not pregnant, then she is a woman who does not know with certainty whether she is among those with cycles, or among those who follow the months, or among the pregnant without doubt. As she is like that

she must wait until she is certain that she is pregnant, in which case her 'iddah is the duration of her pregnancy, or until she is certain that she is not pregnant, in which case she can marry if she wishes, once she is sure she is not pregnant, because her connected 'iddah obliged by Allah whether by cycles or months is completed.

The longest period for waiting after her last intercourse with her husband is five months. She cannot exceed this except if she is certain of pregnancy or of its absence, because the Messenger of Allah ﷺ said that after four months the soul is breathed into the fetus, and if it is alive, it must have movement.

As for those with irregular cycles. They must complete their cycles fully, with no set limit, because Allah Almighty has obliged them to wait three cycles and has not set a specific limit, "Whoever exceeds the limits of Allah has wronged himself." [al-Ṭalāq: 1]

If she menstruates once and then does not, or twice and then does not, or waits for her first menstruation and it does not come after she had previously menstruated during her husband's marriage bond, she must always wait until she completes three full menstruations as Allah ordered, or until she reaches the stage of menopause. Once she reaches it, she starts three months again. Because Allah did not set the 'iddah of three months except for those who have never menstruated and for the menopausal women. This is not the same as the others. Once she becomes menopausal, her 'iddah falls under Allah's ruling of three months. This is the word of Allah and His order.

Issue: The Closeness of Aqrā'

Whether the menstrual cycles are close together or are far apart, there is no limit for this. Except that the saying of a woman in this is not accepted if her husband denies it, except by the testimony of four upright women who are knowledgeable, who can testify that she menstruated menstrual blood and then became pure from it and in

that manner three cycles, or by the testimony of two such women along with her oath.

This is because Allah did not set a limit for this matter, and also not His Messenger ﷺ. Allah said, “And your Lord is never forgetful.” [Maryam: 64]

And it is from certain falsehood and impossible to claim that Allah intended for the cycles (aqrāʾ) to have a specific amount for which lesser than it cannot happen, and then remain silent about it, tasking us to know the unseen which He has concealed from us, or to rely on false assumptions and corrupt saying for which its falsehood is beyond doubt.

As for not believing her in that if the husband rejects it, it is because the Messenger of Allah ﷺ ruled that evidence (bayyina) is required from one who makes a claim. The woman claiming it is claiming the invalidation of a right of her husband about the husband’s rajʿah during her ʿiddah, whether she likes it or dislikes it that rajʿah. So her claim is not accepted except with the evidence of the upright.

If they say, “It was narrated from the Prophet ﷺ that she menstruates, in Allah’s knowledge, six or seven [days].”⁴²⁸

We say: This is weak as ʿAbdullah ibn Muḥammad ibn ʿAqīl ibn Abī Ṭālib is weak.

If they say: “The Prophet ﷺ said: ‘Look at the number of days and nights in which you used to menstruate.’”⁴²⁹

We say: There is no doubt that this order ﷺ was for women who have known days and nights of menstruation. The clarification for that has preceded in the book of Ṭahārah and all praise is for Allah. So it is established that this narration is only for those with known days and nights. And the other narration is for those who have not reached the knowledge of nights or days, every narration is upon its apparent without tasking a false taʿwīl and without abandoning one for the other.

⁴²⁸ Musnad Aḥmad 27474, 45/467-478: Ḍaʿīf

⁴²⁹ Ṣaḥīḥ al-Bukhārī 325: Ṣaḥīḥ

If it is said, “Allah Allah set three months in return for three cycles.”

We say: Yes, and this does not imply that a cycle cannot be less than one month or more than one month.

If they claim, “It is not possible to know that pregnancy does not take place within the time that is less than half a month.”

We say: And also not in three months. And all of you make the ‘iddah completed by counting aqrā’, even if each cycle is less than three months.

We find that Almighty said, “Three aqrā’.” [al-Baqarah: 228]

And He did not specify a number of days which it cannot exceed. Allah said, “And your Lord is never forgetful.” [Maryam: 64]

The Prophet ﷺ ordered that when menstruation begins, a woman must leave prayer; when it ends, she must pray, fast, and is then permissible for her husband. And when he ﷺ ruled menstruation he ﷺ did not specify a specific limit for this, and no one is permitted to oblige one, except that if her husband denies it, her statement is accepted only with the evidence of upright witnesses, as we mentioned. And likewise if the husband claims that her ‘iddah is complete and she says it is not, the husband is not believed except by evidence, while she is believed along with her oath. Because the claim is against her, and Allah grants success.

Some have tumulted by claiming that her statement about the completion of ‘iddah is valid and believed by Allah’s words, “It is not permissible for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day.” [al-Baqarah: 228]

There is not in this verse a dalīl on the obligation of believing her statement, and it is not known from where they oblige with this verse believing her.

A woman claiming that she has completed her ‘iddah has not concealed anything created by Allah in her womb. She only claims that Allah created her menstruation, and she is either lying or truthful, so she has no place in this verse from the prohibition of concealing what

Allah has created in her womb and there is not in it that what is not permitted invalidates the right of the husband which Allah has obliged in raja'ah. And if she claims she is pregnant and the husband denies it, four upright midwives must be presented to her whose integrity ('adālah) is unquestioned with no other way. If they testify to her pregnancy, her 'iddah is ruled with what obliges the pregnancy. And if they testify that she is not pregnant, her claim is invalid. And if they testify to pregnancy but it is later confirmed that they lied or were mistaken, she must return any maintenance or clothing she received from the husband. Allah Almighty grants success.

Issue: the 'Iddah of Death and Iḥdād

The 'iddah of death and iḥdād which are specific matters which a woman must avoid in that 'iddah as we will clarify are obligatory upon a non-adult girl and also upon an insane woman.

Abū Ḥanīfah said, "She must observe the 'iddah, but no iḥdād is obligatory because these two are not mukhāṭabah (addressed with the rulings)."⁴³⁰

If, according to him, that is a valid ḥujjah that nullifies iḥdād, then it must also nullify the waiting period from her; because Allah, Exalted is He, says, "And those among you who die and leave wives behind, they shall wait by themselves for four months and ten [days]." [al-Baqarah: 234]

Because the non-adult girl is not addressed and also not the insane woman and she does not wait.

Umm Salamah narrated, "A woman said: 'O Messenger of Allah ﷺ, my daughter's husband has died and her eye is in pain, may we apply kohl to it?' The Messenger of Allah ﷺ said: 'No, no. It is only four months and ten [days].'"⁴³¹

⁴³⁰ Mukthaṣar Ikhtilāf al-'Ulamā' 2/395

⁴³¹ Al-Muwatta' Riwāyah Abī Muṣ'ab 1719, 1/661: Ṣaḥīḥ

So the Prophet ﷺ did not specify for this ruling an adult or a non-adult woman, and also did not specify the sane or insane woman, and he also did not address her, he instead addressed someone else on her behalf and this is a generality beyond what is in the Qur'ān.

If she begins her waiting period from the first night of the month, she completes four new moons (hilāls) and ten nights into the fifth crescent. When fajr rises on the tenth day, her waiting period is complete and she becomes permissible for marriage; because Allah, “And ten (wa ‘ashran),” [al-Baqarah: 234] which is a ta'nīth word, so it is for the nights. If Allah had intended days, He would have said, “wa ‘ashratan.”

And if she begins the waiting period before or after that, then her waiting period is one hundred and twenty-six nights, counting only the days in between. Because the Messenger of Allah ﷺ said, “The month is twenty-nine days,” as mentioned before.

And it is not possible for the days of one month to intervene with what is not from it and this is impossible without doubt. And with Allah, Exalted is He, is success.

Issue: The Woman in Her Waiting Period Due to Death Must Avoid Kohl

It is obligatory upon the woman in her waiting period due to death of the husband to avoid all kohl, even if she does it out of necessity or not, even if she would lose her eyesight, whether by night or day. As for medicinal bandaging in this situation, it is permissible for her. She must also avoid every dyed garment, whether it is worn on the head, the body, or any part of the body, whether it is black, green, red, yellow, or any other color, except for ‘al-‘aṣb’ only, they are garments embroidered and woven in Yemen; these are permitted for her. She must also avoid all dyeing, not approaching dyeing at all in any form in general. She must also avoid combing, except with the comb only,

that is permissible for her. She must also avoid every single perfume not approaching it in any way, except for a little *qust* or *izfār* when purifying only. It is permissible for her after that to wear whatever she wishes of white or yellow silk, sea-wool which is its color, white cotton, white linen from *diqq* of Egypt and Sudan, and others. It is permissible for her to wear woven fabric with gold, and all types of jewelry: from gold, silver, precious stones, rubies, emeralds, and the like. She can also enter the bathhouse, and wash her head with *khiṭmī* and *ṭafl*. So there are five things only which she must avoid only.

Zaynab bint Umm Salamah narrated from her mother Umm Salamah, “The daughter of al-Naḥḥām’s husband died, so her mother came to the Prophet ﷺ and said: ‘My daughter’s eye is in pain; may I apply kohl to her?’ He said: ‘No.’ She said: ‘I fear that her eye may rupture.’ He said: ‘Even if it ruptures.’”⁴³²

And it is narrated from Umm ‘Aṭiyyah, “The Messenger of Allah ﷺ said, “A woman must not mourn over a deceased person beyond three [days] except for her husband, in which case she must mourn for four months and ten [days]. She must not wear dyed clothing except ‘aṣb garments, and not apply kohl, not comb her hair, not touch perfume except when she purifies herself after menstruation, with a piece of *qust* or *azfār*.”⁴³³

Qust is a type of perfume or ‘ūd and the same for *azfār*.

And from Umm ‘Aṭiyyah, that the Messenger of Allah ﷺ said, “It is not permissible for a woman who believes in Allah and the Last Day to mourn over a deceased person beyond three [days] except for her husband. She must not apply kohl, and not dye, and not wear dyed clothing.”⁴³⁴

These are the authentic narrations from the Messenger of Allah ﷺ, and they are gather everything we have mentioned. But here there

⁴³² Sharḥ Mushkil al-Āthār 1142, 3/175: Ṣaḥīḥ

⁴³³ Al-Sunan al-Kubra 5698, 5/310: Ṣaḥīḥ

⁴³⁴ Al-Mujtaba 3536: Ṣaḥīḥ

are also narrations that are not authentic, and we will show them if Allah wills so that those who do not know are not misled by them.

Among them is a narration attributed to the Prophet ﷺ, “The woman whose husband has died must not wear garments dyed with ‘uṣfur, and also not those dyed with safflower, and also no jewelry.”⁴³⁵

There is in this narration the mention jewelry, and it is not authentic, because Ibrāhīm ibn Ṭahmān is weak. And if it would be authentic it would be obligatory to act upon it.

And iḥdād is obligatory even upon a dhimmiyyah woman because Allah said, “And judge between them by what Allah has revealed.” [al-Mā'idah: 49]

And Allah said,] “And fight them until there is no more fitnah, and the religion is entirely for Allah.” [al-Anfāl: 39]

And the religion is ruling. So it is obligatory to rule over them by the judgment of Islam, and it is binding upon them. By abandoning it, they have earned eternal punishment. Whoever says that they are not obliged the religion of Islam has left Islam. And iḥdād is also obligatory upon the slave woman whose husband has died, just as it is upon the free woman.

And among the narrations is what Umm Ḥakīm bint Asīd narrated from her mother, “That her husband had died, so she sent her maidservant to Umm Salamah, the Mother of the Believers, to ask her about kuḥl al-jalā'. She said: ‘Do not apply it except for a matter in which you have no choice and which becomes too severe for you, and then wipe it away during the day. For indeed, the Prophet ﷺ entered upon me when Abū Salamah had died, and I had put ṣabr on my eye. So he said: ‘What is this, O Umm Salamah?’ I said: ‘O Messenger of Allah, it is only ṣabr, it has no perfume.’ He said: ‘It beautifies the face, so do not apply it except at night, and remove it during the day. And do not comb your hair with perfume or with ḥinnā', for indeed it is a dye.’ I said: ‘With what should I comb my hair, O Messenger of Allah?’ He

⁴³⁵ Sunan Abī Dāwud 2304: Ḍa'īf

said: ‘With sidr (lote-tree leaves), with which you cover your head.’”⁴³⁶

This is weak as Umm Ḥakīm is majhūla, and her mother is even more unknown.

If it is said, “The meaning of iḥdād is the avoidance of adornment?”

We say: Far be it from Allah that this is the case. By Allah, if the Messenger of Allah ﷺ had intended that, he would not have been incapable of clarifying it in a single word, and He would not be lengthening the matter by mentioning dye except for al-‘aṣb, and by mentioning perfume except for al-quṣṭ and al-aẓfār at the time of purification, and by mentioning kohl, and combing specifically in dyeing. While he ﷺ is given jawāmi‘ al-kalim. And from the falsehoods that are certain is to attribute to him ﷺ that he intended adornment while he did not say that, and only meant some dyes yet mentioned them in general. This is clear falsehood in which there is no doubt, and a lie that is decisively established, and every statement devoid of evidence is falsehood.

If they say, “He only intended by iḥdād grief?”

We say: This is a lie for which there is no evidence whatsoever. And if a woman would openly declare that she was never as pleased as she was by the death of her husband, there would be upon her no sin in that and no blame. As she had not fallen short in the rights of marriage during his lifetime. And if iḥdād would be grief, then it would be permissible for her after the ‘iddah, while grief after the ‘iddah is not prohibited. And it is not permissible for her to have iḥdād longer than the prescribed period.

A group said, “The woman divorced three times, or the one whose husband has died, can apply kohl, comb her hair, perfume herself, apply dye, wear sandals, and put on whatever she wishes.”

And they say, “The widow does not observe iḥdād.”

⁴³⁶ Sunan Abī Dāwud 2305: Ḍa‘īf

They argue with what is narrated about ‘Abd Allāh ibn Shaddād ibn al-Hād, “That the Messenger of Allah ﷺ said to the wife of Ja‘far ibn Abī Ṭālib: ‘When three days have passed, wear what you wish, or when it is after three days.’”⁴³⁷

And what is narrated from ‘Abd Allāh ibn Shaddād, “That Asmā’ bint ‘Umays sought permission from the Prophet ﷺ to weep over Ja‘far while she was his wife, so he gave her permission for three days. Then after three days he sent word to her: ‘Purify yourself and apply kohl.’”⁴³⁸

Both are weak as they are munqaṭi‘, because ‘Abd Allāh ibn Shaddād did not hear anything from the Messenger of Allah ﷺ and al-Ḥajjāj ibn Arṭāh is weak. And if a dyed garment is washed until there remains no trace of the dye in it, then it is no longer dyed, so it is permissible for her to wear it.

Issue: Iḥdād for the Deceased

If a woman does iḥdād for three days for the death of a father, or a brother, or a son, or a mother, or a relative, male or female, that is permissible. This is because of what Umm Ḥabībah and Zaynab bint Jaḥsh narrated about the Messenger of Allah ﷺ, “It is not permissible for a woman who believes in Allah and the Last Day to observe iḥdād over a deceased person beyond three (days), except for her husband, in which case (it is) four months and ten (days).”⁴³⁹

⁴³⁸ Al-Awsaṭ of ibn al-Mundhir 7789, 9/575

⁴³⁹ Ṣaḥīḥ al-Bukhārī 5334: Ṣaḥīḥ

Issue: No İhdād is Obligatory Upon the Woman Divorced Thrice

There is no İhdād at all obligatory upon a woman who has been divorced thrice.

The argument of those who obligate İhdād upon the woman divorced thrice is that they said, “She is separated from her husband just like the one whose husband has died, so it is obligatory that their ruling be the same.”

We do not know of any tumult for them other than this, and it is a corrupt tumult; because every single qiyās is false.

Then it is said to them, “Why do you not oblige İhdād upon the woman who does li‘ān, or the one who seeks khul‘, or the one who is divorced with a bā‘in divorce? Because all of these, according to you, are women separated from their husbands.

And also Allah ﷻ has called the woman divorced with a revocable divorce (ṭalāq raj‘ī) a “Separated woman from her husband,” by the completion of her ‘iddah, as He ﷻ says: “Retain them in kindness or separate from them in kindness.” [al-Ṭalāq: 2]

And there is no difference that there is no İhdād obligatory upon her not during her ‘iddah and also not after her ‘iddah.

And Allah ﷻ has differentiated between what they have combined, He made the ‘iddah of the woman whose husband has died four months and ten (days), while the ‘iddah of the irrevocably divorced woman (al-mubtūta) is three qurū’ or three months. So the invalidity of those who make qiyās of one upon the other becomes clear. And with Allah ﷻ is success.

Issue: The Woman in ‘Iddah Neglects Iḥdād Until the ‘Iddah Ends

If the woman in ‘iddah neglects the mentioned iḥdād until the ‘iddah ends, then if it was out of ignorance there is no blame; but if it was deliberate, then she has disobeyed Allah ﷻ, and she does not repeat it, because the time of iḥdād has already ended, and it is not valid to perform something outside of its specified place and outside of its specified time.

If the ‘iddah of the woman whose husband has died is her giving birth, then she must observe iḥdād for four months and ten days at least. But we do not obligate it upon her after that, because all the revealed texts only came with, “Four months and ten days,” only.

And it is authentically established that the Messenger of Allah ﷺ ordered Subay‘ah al-Aslamiyyah to marry whomever she wished when she gave birth her to her child just a few nights after the death of her husband, while she had shown inclination toward those that asked her for marriage, and he ﷺ did not object to her in that⁴⁴⁰. So it is established that there is no iḥdād upon her after her giving birth, even if that occurs before the completion of four months and ten days. And there is no naṣṣ obligating it upon her if the pregnancy continues beyond four months and ten. And with Allah ﷻ is success.

Issue: The Widow and the Woman Divorced Thrice Can Observe Their ‘Iddah Wherever They Wish

The woman whose husband has died, the one divorced thrice in a row or the one divorced with the third divorce of three, and the freed slave woman who chooses separation from her husband, all of them can observe their ‘iddah wherever they wish. And they have no right of

⁴⁴⁰ Ṣaḥīḥ al-Bukhārī 4909: Ṣaḥīḥ

housing/lodging (suknah), not upon the one who divorced her, and also not upon the heirs of the deceased, and also not upon the one whom she chose to separate from. And they have no maintenance (nafaqa). And it is permissible for them to perform Ḥajj during their ‘iddah, and to travel wherever they wish. As for every woman divorced with a revocable divorce (ṭalāq raj‘ī), as long as she is in her ‘iddah, it is not permissible for her to leave her house in which she was divorced. She has the right upon him of maintenance and clothing. If there is great fear, or if she is obliged a ḥadd, then she must leave at that time. Otherwise, she must not leave at all, not by night and also not by day, except out of necessity in which there is no way around it.

The decisive evidence of this is the statement of Allah ﷻ, “O Prophet, when you divorce women, divorce them for their prescribed waiting period and take account of the waiting period, and fear Allah, your Lord. Do not send them out of their homes, nor should they leave except in case they commit an obvious immorality. And those are the limits of Allah. Whoever transgresses the limits of Allah has certainly wronged himself. You do not know; perhaps Allah will bring about after that a matter. And when they have reached their term, either retain them in a fair manner or part from them in a fair manner.” [al-Ṭalāq: 1-2]

This is the description of the ruling of revocable divorce (ṭalāq raj‘ī), not irrevocable divorce (ṭalāq al-bā‘/bā‘in).

As for irrevocable divorce (ṭalāq bā‘in/bā‘): it is narrated from Fāṭimah bint Qays, “From the Prophet ﷺ regarding the woman divorced thrice: she has no housing/lodging and no maintenance.”⁴⁴¹

And it is narrated from al-Sha‘bī, “I entered upon Fāṭimah bint Qays and asked her about the judgment of the Messenger of Allah ﷺ concerning her. She said: ‘Her husband divorced her irrevocably (ṭalāq al-battah). She said: ‘So I disputed with him before the Messenger of Allah ﷺ regarding residence and maintenance. He did not assign me

⁴⁴¹ Ṣaḥīḥ Muslim 1480, 44: Ṣaḥīḥ

residence and also no maintenance, and he ordered me to observe my ‘iddah in the house of Ibn Umm Maktūm.’”⁴⁴²

And it is narrated from Fāṭimah bint Qays, “Her husband divorced her. She said: ‘So I mentioned that to the Messenger of Allah ﷺ, and he said: ‘You have no maintenance and no lodging.’”⁴⁴³

And Jābir ibn ‘Abd Allāh narrated, “My maternal aunt was divorced, and she intended to cut down her date-palms. A man rebuked her from going out, so she went to the Prophet ﷺ. The Prophet ﷺ said to her: ‘Rather, go and cut your date-palms, for perhaps you may give charity or do something good.’”⁴⁴⁴

As for the narration of Fāṭimah, it has been transmitted by naql al-kāffah.

And as for the narration of Jābir, it is of the utmost authenticity. Abū al-Zubayr heard it from him, and the Prophet ﷺ did not specify for her that she cannot spend the night there from among other places to spend the night.

And Allah said, “And he does not speak out of desire. It is nothing but revelation revealed.” [al-Najm: 3-4]

And Allah said, “And your Lord is never forgetful.” [Maryam: 64]

And it is not permissible for anyone to depart from these two narrations, because of their clarification and their authenticity.

And no narration at all has been authentically established regarding the obligation of lodging/housing (sukna) for the woman whose husband has died.

And the place to stay in does not cease to either be owned by the dead husband or owned by someone else. If it is owned by someone else, whether rented or permitted for use by him, then the contract is nullified by his death, and it is not permissible for anyone to reside in it except with the permission and good pleasure of its owner. The

⁴⁴² Musnad Aḥmad 27342, 45/330: Ṣaḥīḥ

⁴⁴³ Ṣaḥīḥ Muslim 1480, 37: Ṣaḥīḥ

⁴⁴⁴ Ṣaḥīḥ Muslim 1483, 55: Ṣaḥīḥ

Messenger of Allah ﷺ said: “Indeed, your blood and your wealth are inviolable upon you.”

As for the woman divorced with a revocable divorce (ṭalāq rajʿī), she does not leave the place where he divorced her until her ʿiddah is completed. Whoever obligates maintenance from the entire estate for the woman whose husband has died, or for the one irrevocably divorced (al-mubtūtah), has spoken clear falsehood, obvious to all. Because the wealth of the dead husband is no longer his, it passes to others. So it is not permissible that it is spent on his wife, or his umm walad, from the wealth of the creditors, or the wealth of the heirs, or from what he had bequeathed to others. This is pure oppression. And the woman irrevocably divorced is no longer his wife, she is the same as any ajnabiyyah woman. So obligating maintenance upon her is prohibited.

And we will mention, if Allah ﷻ wills, the tumult of those who obligate lodging and maintenance for the irrevocably divorced, or lodging without maintenance, or who specify this to the pregnant woman, and we will clarify, with the aid of Allah ﷻ, the invalidity of all of that.

As for the statement of those who say, “She has no maintenance and no lodging except if she is pregnant.”

They mention the verse, “And if they are pregnant, then spend on them until they deliver their pregnancy. And if they breastfeed for you, give them their due wages and consult among yourselves in a fair manner. And if you find it difficult, then another woman shall nurse for him — let the one with means spend according to his means, and whoever is provided with sustenance, let him spend from what Allah has given him. Allah does not burden a soul except what He has given it.” [al-Ṭalāq: 6-7]

They say, “And this is general for every divorced woman who is pregnant.”

This is not a ḥujjah for them, because they remained silent about the beginning of the verse, which is the statement of Allah ﷻ, “Provide

them with accommodation from where you reside, according to your means, and do not harm them so as to oppress them. And if they are pregnant, then spend on them until they deliver their pregnancy.” [al-Ṭalāq: 6]

So the one whom Allah ﷻ ordered to be provided for if she is pregnant, is the same one whom He ordered to be housed/lodged, there is no difference. So whoever obligates maintenance without lodging has spoken without evidence, and his statement is false.

So nothing remains except our statement, or the statement of those who obligate for her both lodging and maintenance if she is pregnant and we will clarify the correct saying in this, if Allah ﷻ wills.

They also argued with what is narrated from Fāṭimah bint Qays, “She said that she had been under Abū ‘Amr ibn Ḥafṣ al-Makhzūmī... and he divorced her with the final of three divorces when he departed to Yemen with ‘Alī ibn Abī Ṭālib, and that ‘Ayyāsh ibn Abī Rabī‘ah and al-Ḥārith ibn Hishām said: ‘By Allah, she has no maintenance except if she is pregnant.’ She mentioned that to the Messenger of Allah ﷺ, and he said: ‘There is no maintenance due to you except if you are pregnant.’ And she sought permission from him to move, and he gave her permission.”⁴⁴⁵

The wording in this narration, “Except if you are pregnant,” has only come through this ṭarīq, and none of those who narrated this narration from Fāṭimah mentioned it other than Qabīṣah. And the ‘illah of this narration is that it is munqaṭi‘ as ‘Ubayd Allāh ibn ‘Abd Allāh did not hear it, not from Qabīṣah and also not from Marwān, it is not known from whom he heard it. And there is no ḥujjah in a munqaṭi‘ narration. If it had been muttaṣil, it would be obligatory to hasten in acting upon it. So this is false and praise belongs to Allah, Lord of the Worlds.

Then we look at the saying of those who oblige for the irrevocably divorced woman (al-mubtūtah) lodging/housing without

⁴⁴⁵Al-Muṣannaf of ‘Abd al-Razzāq 12024, 7/20: Ḍa‘īf

maintenance, and they argue with the mentioned verse. But they have no ḥujjah in it for one who contemplates, because Allah began His truthful saying, “Provide them with accommodation from where you reside according to your means,” [al-Ṭalāq: 6] after His saying about the clarification of waiting periods, in which He says, “And those of your women who have despaired of menstruation, if you doubt, their ‘iddah is three months; and those who have not menstruated, and those who are pregnant, their term is until they deliver their pregnancy. And whoever fears Allah, He will make for him of his affair ease. That is the command of Allah which He has sent down to you. And whoever fears Allah, He will remove from him his sins and enlarge for him his reward. Provide them with accommodation from where you reside according to your means, and do not harm them so as to oppress them. And if they are pregnant, then spend on them until they deliver their pregnancy... According to your means.” [al-Ṭalāq: 4-6]

As we have mentioned, and we do not differ that this waiting period is for the irrevocably divorced woman (al-mubtūtah) just as it is for other than the irrevocably divorced woman. So it is obligatory by necessity that the saying of Allah, “Provide them with accommodation from where you reside according to your means, and do not harm them so as to oppress them. And if they are pregnant, then spend on them until they deliver their pregnancy,” [al-Ṭalāq: 6] is intended for all divorced women, both the irrevocable and revocable, or for one of the two. There is no doubt in this.

If you say, “He intended both categories.”

We say: Then it implies according to this, that the non-irrevocably divorced woman also has no maintenance except if she is pregnant, just as you say regarding the irrevocably divorced woman because, according to you, the verse is about and that opposes your saying, so this saying is invalid.

If they say, “He intended the irrevocably divorced only?”

We say: This is wrong from two ways. The first is that it is a claim without decisive evidence, and a takhṣīṣ of the Qur’ān without

evidence. And this is prohibited. And the second is that the Sunnah from the Messenger of Allah ﷺ has been authentically established in the narration of Fāṭimah bint Qays that she has no maintenance and also no lodging. And far exalted is Allah that the Messenger of Allah ﷺ would judge contrary to the Qur'ān, except if it is an abrogation or an addition to what is in the Qur'ān, and this is not added to what is in the verse. And it is not permissible to say this is an abrogation, except with certainty, not with mere claim. So this saying is invalid.

If they say, "Allah intended only the revocably."

We say: You have spoken the truth. And this is our saying and our decisive evidence for it is the narration of Fāṭimah bint Qays. And we oblige maintenance upon the woman divorced with a revocable divorce, if she is not pregnant because she is his wife, he inherits from her and she inherits from him, without difference. And the text has come that wives are entitled to maintenance and clothing, in a clear text that we have already mentioned earlier⁴⁴⁶.

And we have taken the ruling on breastfeeding for the irrevocably divorced woman (al-mubtūtah), the woman whose marriage was annulled by faskh, and the one whose child is attributed to her in a corrupt marriage, from His statement, "And the mothers shall breastfeed their children for two full years." [al-Baqarah: 233]

And we will clarify this in its chapter, if Allah the Exalted wills.

So these are decisive and necessary evidences, from which there is no way out. And with Allah the Exalted lies success. So the mentioned statement falls and all praise is for Allah.

So nothing remains for us except our saying, and the position of those who oblige for the irrevocably divorced woman (al-mubtūtah) both lodging and maintenance.

We then look at their position and find that they have nothing to cling unto except an objection against the narration of Fāṭimah bint

⁴⁴⁶ Ṣaḥīḥ Muslim 1218, 147: Ṣaḥīḥ

Qays. They built their argument upon the claim that if that narration would be invalid, then the aforementioned verses must be taken as applying to every divorced woman, whether irrevocable or not. This is nothing as nothing can negate what is established from the Messenger of Allah ﷺ, no one does this except one with the pitch darkness of ignorance, or the weakness of religion. And we seek refuge with Allah from both of them.

And they mention a narration attributed to ‘Ā’ishah, “That she severely criticized that narration, and said: ‘Fāṭimah was in a desolate place, and it was feared for her safety; for that reason the Prophet ﷺ granted her concession.’”⁴⁴⁷

This is a false narration, because it is from the riwāyah of ibn Abī al-Zinād and he is weak.

And whoever contemplates this narration and the one before it knows that they contradict one another, because if she was made to leave because of her sharp tongue, as in that narration, then it invalidates this other narration in which it says, “She was in a desolate place, so it was feared for her safety; for that reason the Prophet ﷺ granted her concession.”

And the clarification on invalidating the argument based on that will follow, if Allah the Exalted wills, when we clarify everything that they have obscure, and there is no power and no strength except with Allah, the Most High, the Great.

And a narration from Ibrāhīm, who said, “Whenever ‘Umar ibn al-Khaṭṭāb heard the narration of Fāṭimah bint Qays that the Messenger of Allah ﷺ ordered her to complete her ‘iddah outside the house of her husband he would say: ‘We do not establish anything in our religion based on the testimony of a woman.’”⁴⁴⁸

This is false, because it is a munqaṭi’. Ibrāhīm was not born except years after ‘Umar’s death, he took this only from someone in which is no good without doubt.

⁴⁴⁷ Ṣaḥīḥ al-Bukhārī 325 | Sunan Abī Dāwud 2292: Ḍa‘īf

⁴⁴⁸ Sunan Sa‘īd ibn Manṣūr 1361: Ḍa‘īf

If they say, “It has also been narrated in a connected manner up to ‘Umar, “It is not permissible in the religion of Muslims to act on the testimony of a woman.”⁴⁴⁹

We say: This is not from the Prophet ﷺ. And then it is weak as the weakness of this narration with this increases as the state of Abū Yūsuf al-Qāḍī who is weak in ḥadīth is known among those who met him such as Ibn al-Mubārak, ‘Abdullāh ibn Idrīs, Abū Nu‘aym, al-Faḍl ibn Dukayn, Wakī‘ ibn al-Jarrāh, Yazīd ibn Hārūn, Aḥmad ibn Ḥanbal, and others.

And this narration was narrated from the thiqah al-A‘mash by Ḥaḥṣ ibn Ghiyāth with this isnād, and he did not mention in it this outrageous false statement, which is only the way of the Khawārij and the Mu‘tazilah.

And they mention what is narrated by Abū Ishāq, “I was with al-Aswad ibn Yazīd in the Great Mosque, and with us was al-Sha‘bī. Al-Sha‘bī narrated the narration of Fāṭimah bint Qays: ‘That the Messenger of Allah ﷺ did not allot her lodging and also no maintenance.’ Then al-Aswad took a handful of pebbles and struck with it, saying: ‘Woe to you, do you narrate such a thing?’ ‘Umar said: ‘We do not abandon the Book of Allah and the Sunnah of our Prophet for the word of a woman, whose memory we do not know whether she has preserved it or forgotten: She is entitled to lodging and maintenance. Allah the Exalted said: ‘Do not send them out of their houses, nor should they leave except that they commit a clear immorality.’” [al-Ṭalāq: 1]”⁴⁵⁰

And it has come from Abū Ishāq al-Sabī‘ī, who said, “I was in the congregational mosque with al-Aswad ibn Yazīd, and he mentioned: ‘Fāṭimah bint Qays came to ‘Umar, and ‘Umar said: ‘We would not abandon the Book of our Lord and the Sunnah of our Prophet

⁴⁴⁹ Al-Tamhīd 12/97: Ḍa‘īf

⁴⁵⁰ Ṣaḥīḥ Muslim 1480, 46: Ṣaḥīḥ

for the word of a woman, whose memory we do not know whether she has preserved it or forgotten.’”⁴⁵¹

And from al-Sha‘bī, from Fāṭimah bint Qays, “Al-Aswad struck with pebbles and said: ‘Woe to you, why do you issue a ruling like this?’ ‘Umar said to her: ‘If you bring two witnesses who testify that they heard it from the Messenger of Allah ﷺ, otherwise we do not abandon the Book of Allah for the word of a woman: ‘Do not send them out of their houses, nor should they leave except that they commit a clear immorality.’” [al-Ṭalāq: 1].”⁴⁵²

We say: All of this is authentic. As for ‘Umar’s statement: “We would not abandon the Book of our Lord and the Sunnah of our Prophet for the word of a woman, whose memory we do not know whether she has preserved it or forgotten,” this gathers three meanings:

First, the Sunnah of the Messenger of Allah ﷺ is in the possession of Fāṭimah bint Qays, and we bear witness, by the testimony of Allah the Exalted, absolutely, without a shred of doubt that there was no Sunnah with ‘Umar in this matter from the Messenger of Allah ﷺ other than the general rule regarding the lodging of divorced women only. And it is not permissible for a Muslim to assume that ‘Umar, may Allah be pleased with him, had a ruling with him from the Prophet ﷺ and then did not clarify it to the People and bring it, there is in such an act an immense threat in the Qur‘ān.

Here is a very close matter: we have said clearly that there was no Sunnah in this matter with ‘Umar from the Messenger of Allah ﷺ that he concealed or failed to explain and clarify. Then let them explicitly admit that there was with ‘Umar a Sunnah of the Messenger of Allah ﷺ in this matter which he did not inform the people by its naṣṣ, till they can see who among us is the one lying against the Messenger of Allah ﷺ and who among us falsely attributes something to ‘Umar, whom Allah has purified. We accept only the certainty that he had from

⁴⁵¹ Sunan Abī Dāwud 2291

⁴⁵² Al-Mujtaba 3549

the Prophet ﷺ that a divorced woman is entitled to three things: lodging, maintenance, and the duration of the 'iddah.

As for the Book of Allah the Exalted, it has clarified this, for it brings the verse mentioned, which is proof for Fāṭimah against him, “Do not know, perhaps Allah will bring about after that some matter. And when they have reached their term, either retain them in kindness or part from them in kindness.” [al-Ṭalāq: 1-2]

So, does anyone doubt that this verse is specifically about revocable divorce? If 'Umar had been reminded of this, he would have returned, just as he retracted his statement when a woman reminded him of the Word of Allah the Exalted, “And you give one of them a qintār,” [al-Nisā': 20], and he remembered and retracted. And as Abū Bakr reminded him when 'Umar drew his sword, saying: “No one should say that the Messenger of Allah ﷺ has died except that I strike him with the sword.” Then Abū Bakr recited to him the words of Allah the Exalted, “Indeed, you are to die, and indeed they are to die,” [al-Zumar: 30], he fell to the ground⁴⁵³. And with this, Fāṭimah used as evidence by its naṣṣ, as narrated by 'Ubaydullāh ibn 'Abdullāh that Fāṭimah said, “When she received the statement of Marwān in this matter: ‘Between you and me is the Book of Allah the Exalted, Allah said: ‘Then divorce them for their 'iddah... You do not know, perhaps Allah will bring about after that some matter.’ [al-Ṭalāq: 1]. She said: ‘So what matter could occur after three.’”⁴⁵⁴

As for his statement, “Because of the statement of a woman we do not know whether she remembered correctly or forgot,” then what is possible of forgetfulness for Fāṭimah is likewise possible for 'Umar without any doubt. The closest of this is 'Ammār reminding him of the matter of the Messenger of Allah ﷺ to both of them together, regarding performing tayammum from janābah for the one who does not find water. 'Umar did not remember that, and he remained upon the view that a person must not pray until he finds water. And just as he forgot

⁴⁵³ Ṣaḥīḥ al-Bukhārī 3667: Ṣaḥīḥ

⁴⁵⁴ Al-Muṣannaf of 'Abd al-Razzāq 12025, 7/22: Ṣaḥīḥ

what we mentioned earlier, the possibility of forgetfulness does not negate the obligation of accepting the narration of thiqah narrator whose narration Allah ﷻ has obliged us to accept. If that would be the case, it would imply, according to the principles of our opponents, that the khabar al-wāḥid must be entirely abandoned, and the testimony of every witness in Islām rejected, because of the possibility of forgetfulness. So who is more astray than the one who argues with something that he is the first to invalidate out of ‘aṣabiyyah and obstinate persistence in falsehood?

The same is with his statement to her, “If you bring two witnesses who testify that they heard it from the Messenger of Allah ﷺ.” Then they themselves are the first to oppose this. Because if this requirement would be binding on Fāṭimah, then it would also be binding on ‘Umar in every narration he narrates from the Messenger of Allah ﷺ, and on every one of the Companions, without difference. So who is more astray than the one who deceives the Muslims with things that are in reality contrary to and invalid in the religion of Allah ﷻ? And we seek refuge in Allah from abandonment.

If they mention the narration about Fāṭimah bint Qays, from Ibrāhīm, “Indeed ‘Umar was informed of her statement and said: ‘We are not going to abandon a verse from the Book of Allah ﷻ and the saying of the Prophet ﷺ for the word of a woman who may have been mistaken. Did she hear the Prophet ﷺ say: ‘For them is lodging and provision’”⁴⁵⁵

We say: This is mursal, because Ibrāhīm was not even born until years after the death of ‘Umar.

Then, even if it would be authentic, it would not be a ḥujjah. Because there is not in it that ‘Umar heard the Prophet ﷺ say: “For the thrice-divorced woman is lodging and provision.”

It is possible that he heard him ﷺ say: “For the divorced woman is lodging and provision,” which could be understood upon its

⁴⁵⁵ Aḥkām al-Qur‘ān 1863: Ḍa‘īf

generality which is false. It is instead obligatory to use that along with the ḥadīth of Fāṭimah with no other way, then making an exception of the lesser meaning from the one larger in meaning.

It is not permissible to reject an established naṣṣ except with another established naṣṣ, not with problematic narration that are not authentic, or with the ambiguous (mujmalāt) in which is no clarification. So nothing remains from all of this except that ‘Umar only rejected the statement of Fāṭimah. While this narration is weak.

They also tumult with what is narrated that ibn al-Musayyib used to say, “If a man divorces his wife with a final a divorce other than three then she has no maintenance except if she is pregnant, in which case he must provide for her until she delivers her child. For the pregnant divorcee has maintenance according to the Book of Allah ﷻ. And this is what were the Companions of the Messenger of Allah ﷺ were upon, and this is the Sunnah.”⁴⁵⁶

This is very weak, because ibn Sam‘ān is a liar.

As for his argument that she has maintenance in the Book of Allah ﷻ, then the maintenance in the Book of Allah ﷻ is only for the woman under raj‘iyyah (revocable divorce) as clarified before.

As for his statement, “Upon this were the Companions of the Messenger of Allah ﷺ,” this is not a ḥujjah in the religion of Allah.

As for his statement: “And this is the Sunnah,” this is not from the Messenger of Allah so it is not a ḥujjah. This is clarified entirely in chapters about Uṣūl.

And the statement of the Messenger of Allah ﷺ about the woman divorced thrice, “She has no lodging and no maintenance,” which we cited earlier with the most authentic isnad, invalidates all of these false conjectures and clarifies that it was not specific to Fāṭimah alone, but for every woman divorced thrice.

And they mention what Abū Salamah ibn ‘Abd al-Raḥmān narrated when he mentioned the ḥadīth of Fāṭimah. Then he said,

⁴⁵⁶ Sunan Abī Dāwud 2296: Ḍa‘īf

“People criticized her for what she used to narrate about her leaving her husband before she becomes permissible.”⁴⁵⁷

This is false, because it comes from the narration of ‘Abd Allāh ibn Ṣālīḥ who is very weak, as we mentioned before. And it is not known who these people are, what is only known is that the ḥujjah is established on the people through the Messenger of Allah ﷺ, not that the ḥujjah is established against the Messenger of Allah ﷺ through the people. The rejection of those who criticized is what must be rejected.

And they mention what is narrated from ‘Ubayd Allāh ibn ‘Utbah, who mentioned this ḥadīth of Fāṭimah, “Marwān said: ‘This ḥadīth was heard only from a woman; we will act according to the infallibility (‘iṣmah) that we found the people upon.’”⁴⁵⁸

If only Marwān had exercised this piety in such a way that he had not caused division among the Muslims, and had not opposed ibn al-Zubayr, the amīr al-mu‘minīn, without ta‘wīl and had instead adhered to the infallibility (‘iṣmah) that all people and the people of Islām were upon, about ruling ibn al-Zubayr with imāmah from the farthest regions of Africa to the farthest regions of Khurāsān except the people of Jordan, this would have been more fitting for him and more secure for him in his Hereafter.

They also tumult with what is narrated about Fāṭimah bint Qays, “I said: ‘O Messenger of Allah, my husband divorced me three times, and I fear that someone might break in upon me.’ He said: ‘So he ordered her, and she moved.’”⁴⁵⁹

This is as you can see, so reflect on his statement, “So he ordered her, and she moved.” This is not from the words of the Messenger of Allah ﷺ, and also not from the words of Fāṭimah; because the text says, “So he ordered her, and she moved.” It is then established that this is from the words of ‘Urwah. And this narration does not cease that ‘Urwah did not hear it from Fāṭimah making it mursal. What

⁴⁵⁷ Ahkām al-Qur‘ān 1876: Ḍa‘īf

⁴⁵⁸ Ṣaḥīḥ Muslim 1480, 41: Ṣaḥīḥ

⁴⁵⁹ Ṣaḥīḥ Muslim 1482, 53: Ḍa‘īf

clarifies this is what Ḥaṣṣ ibn Ghiyāth narrated about Hishām ibn ‘Urwah, from his father, who said, “Fāṭimah bint Qays said: ‘O Messenger of Allah, I fear that someone might break in upon me, so he ordered her to move.’”⁴⁶⁰

If this is the aṣl of the narration, then it is disconnected, and there is no ḥujjah in a munqaṭi’ narration. It is this or it is the case that ‘Urwah heard it from Fāṭimah, and then it is also not a ḥujjah because there is not in it that the Messenger of Allah ﷺ said, “I only ordered you to move because of your fear that someone might break in upon you.” And as he ﷺ did not say this, it is not permissible for a Muslim who fears the Fire to say, “Indeed, he ﷺ only ordered her to move because of that.” Because there is in that saying about him ﷺ what he did not say from himself.

And in any case, it has been authentically established as mentioned before, from the ṭarīq of Abū Salamah ibn ‘Abd al-Raḥmān, and al-Sha‘bī, and Abū Bakr ibn Abī al-Jahm, that the Messenger of Allah ﷺ said, “There is no lodging for her, and no maintenance.”

So do you think that the obligation of maintenance is omitted because of the fear of someone breaking in upon her? All of this is a blemish upon what is clear as crystal.

And his ﷺ statement as mentioned before, “Rather, the woman divorced three times has no lodging and no maintenance,” suffices from all of this, and from burdening oneself with false assumptions. And with Allah, is success.

So, nothing remains except the rejection of ‘Umar and ‘Ā’ishah, against Fāṭimah who narrated from the Prophet ﷺ so what about that? That is not a ḥujjah against her and also not a ḥujjah against the Prophet ﷺ. Then how when Jābir ibn ‘Abd Allāh, and ibn ‘Abbās, and ‘Ayyāsh ibn Abī Rabī‘ah, and others among the Companions, may Allah be pleased with them, all agreed with Fāṭimah. So what makes when it comes to seeking refuge in the sayings of the companions

⁴⁶⁰ Al-Muṣannaf of ibn Abī Shaybah 19172

themselves the saying of ‘Ā’ishah and ‘Umar outweigh the saying of those whom we mentioned? Then how when there is no ḥujjah in any of that at all. The ḥujjah upon everyone is only what has been authentically narrated from the Messenger of Allah ﷺ.

And we declare, proclaim, and announce: that the saying of the Mother of the Believers ‘Ā’ishah, and of ‘Umar, the amīr al-mu‘minīn, must not be taken when what has been authentically narrated from the Messenger of Allah ﷺ contradicting it. It is not permissible then to take by their ra’ī, and also not for anyone to say regarding them that there was a Sunnah of the Messenger of Allah ﷺ which they concealed. Instead, they must explicitly say, “Indeed, the ra’ī of ‘Umar and the Mother of the Believers is more deserving to be followed than what has been authentically narrated from the Messenger of Allah ﷺ.” Then let them consider their state before Allah, the Exalted, and before the people of Islām.

And I wonder where was this obedience to the Mother of the Believers ‘Ā’ishah was when they did not pay attention to her statement about the taḥrīm of the suckling of the adult? As they ascribed to her what Allah, the Exalted, had exonerated her from that she would permit access through the veil of Allah, the Exalted, which He set upon the wives of the Messenger of Allah ﷺ, to those for whom it is not permissible to enter. This is the grave matter that causes the skins of the believers to shiver. And likewise to her saying that the woman whose husband dies can observe her waiting period wherever she wishes.

And where were they with this obedience to ‘Umar may Allah be pleased with him when they opposed him regarding wiping over the turban, and when they had him giving fatwā that prayer could be performed without wuḍū’?

So the narration of Fāṭimah is established as clearly as the sun, because she is among the earliest of the Emigrant women who gave the bay‘ah⁴⁶¹.

Allah has testified to the truthfulness of them all, for He said, Mighty and Majestic, “For the poor emigrants (al-muhājirīn) who were driven out from their homes and their wealth, seeking bounty from Allah and His pleasure, and supporting Allah and His Messenger ﷺ — it is they who are the truthful.” [al-Ḥashr: 8]

So who is more astray than one who denies any of them? We ask Allah for safety, and all praise belongs to Allah, Lord of the worlds.

And they said regarding the narration of Jābir’s aunt, “He ﷺ only ordered her to go out on the condition that she does not spend the night there.”⁴⁶²

The answer: This is an easily uttered lie, and an attribution to the Messenger of Allah ﷺ of fabrication without evidence. By my life, if no narration had come at all, it would have been obligatory that there is no maintenance and also no lodging for a woman irrevocably divorced (mabtūtah), because she is an ajnabiyyah and no longer his wife, and has then no right over his wealth, not in lodging and also not in maintenance. As for the waiting period (‘iddah), it is something Allah ﷻ has obligated upon her; the husband has no right in removing it or in adding to it. And by Allah ﷻ is success.

As for the one whose husband has died: those who obligate residence for her argue with what is narrated about Furay‘ah bint Mālik, “That her husband was killed at al-Qadūm. She came to the Prophet ﷺ and said that she had family, so he first ordered her to move. When she turned away, he called her back and said: ‘Remain in your house until the decree (al-kitāb) reaches its appointed term four months and ten [days].’”⁴⁶³

This is weak as Zaynab bint Ka‘b is majhūlah.

⁴⁶¹ Ṣaḥīḥ Muslim 2942, 119

⁴⁶² Ṣaḥīḥ Muslim 1483, 55

⁴⁶³ Al-Muṣannaf of ‘Abd al-Razzāq 12075, 7/34: Ḍa‘īf

And with what is narrated about Furay‘ah, “That her husband had gone out seeking enemies, and when he reached the area of al-Qadūm, they caught up with him and killed him. She came to the Messenger of Allah ﷺ and mentioned to him that her husband had been killed and that he had left her in a dwelling not owned by him, and she sought his permission to move. He permitted her, and she set off until she reached the door of the chamber, but he commanded that she be returned. Then he ordered her not to leave until the decree (al-kitāb) reached its term.”⁴⁶⁴

This is also weak as Zaynab bint Ka‘b is majhūlah.

And through the ṭarīq of Mālīk —» Sa‘d ibn Ishāq ibn Ka‘b ibn ‘Ujrah —» his aunt Zaynab bint Ka‘b ibn ‘Ujrah —» Furay‘ah bint Mālīk ibn Sinān, the sister of Abū Sa‘īd al-Khudrī, who mentioned this. In it she said, “I asked the Messenger of Allah ﷺ to return to my family among Banū Khudrah, for my husband had not left me in a dwelling that he owned.” And in it: “He ﷺ said to her: ‘Remain in your house until the decree (al-kitāb) reaches its term.’” She then observed her waiting period there for four months and ten [days]⁴⁶⁵.

This is also weak as Zaynab bint Ka‘b is majhūlah

And through the ṭarīq of Mujāhid said, “Men were martyred on the Day of Uḥud, so their wives came to the Messenger of Allah ﷺ and said: ‘O Messenger of Allah, we feel lonely at night; may we spend the night with one of us, then disperse to our houses in the morning?’ The Messenger of Allah ﷺ said: ‘Converse in the house of one of you as you wish, but when you intend to sleep, let each woman return to her own house.’”⁴⁶⁶

This is weak because it is munqaṭi’.

So all arguments for their saying falls apart.

⁴⁶⁴ Al-Muṣannaf of ‘Abd al-Razzāq 12073, 7/33

⁴⁶⁵ Al-Muwatta’ Riwāyah Yaḥyā 1729, 2/106

⁴⁶⁶ Al-Muṣannaf of ‘Abd al-Razzāq 12077, 7/36: Ḍa‘īf

Issue: No ‘Iddah From an Invalid Marriage

There is no waiting period (‘iddah) from an invalid marriage. The decisive evidence for this is that she is not a divorced woman and also not someone whose husband has died. No Qur’ān, Sunnah, or decisive evidence from either of them has established an obligation of ‘iddah upon her.

Issue: The Divorced Woman Begins Her ‘Iddah From the Time the News of Divorce Reaches Her

And the divorced woman who is not pregnant, and the pregnant woman whose husband has died, both begin their ‘iddah from the time the news of the divorce and the news of the death reach them. As for the pregnant woman whose husband has died, her ‘iddah begins only from the moment of his death.

The decisive evidence for this: is the saying of Allah ﷻ, “And those among you who die and leave wives behind, they shall wait by themselves for four months and ten days.” [al-Baqarah: 234]

And His saying, “And the divorced women shall wait by themselves for three menstrual cycles.” [al-Baqarah: 228]

And He said, “So their waiting period is three months, and those who have not menstruated.” [al-Ṭalāq: 4]

So, it must be that they are bound to the ‘iddah of death, and of menstrual cycles, and of months, with an intention on their part and waiting. Otherwise, that remains binding upon them.

As for the pregnant woman, Allah ﷻ says, “And for those who are pregnant, their term is until they deliver their pregnancy.” [al-Ṭalāq: 4]

Here there is no action that they are ordered to intend or to perform deliberately. But the pregnant divorced woman is excluded from this, based on what we mentioned earlier that the divorce of the

absent one is not valid at all until the news reaches her. So that suffices without needing to repeat it. And the woman whose husband has died remains bound by the term of delivering her pregnancy after the death of her husband. And by Allah ﷻ is success.

And what we say is: Indeed, the two, the husband and wife, inherit from one another, and he has the right of return (raj'ah) to her so long as his three divorces has not reached her. And she does not return what she has consumed during the divorce, because she remains his wife until it reaches her or until the news comes to her.

As for in the case of death, the matter is different: she must return what she consumed, because she ate from the wealth of the heirs or from the wealth of the creditors and she has no right over them. Her right is only in the wealth of the husband. As long as the wealth remains his wealth, her right in it remains established. And by Allah ﷻ is success.

Issue: Dispute Between Spouses Over Household Belongings During Marriage or After Divorce

If the two spouses dispute over the household belongings, whether during the marriage or after divorce, or if one of them disputes with the heirs of the other after death, or if both of their heirs dispute after their deaths, then all of that is the same: the matter is decided between them by oaths either the oaths of both disputants, or the oath of the surviving one of them, or the oath of the heirs of the deceased among them, or the oaths of both sets of heirs together. This is the same for weapons, jewelry, things that are only for men, things suited only for women, and things that are for both men and women, except for whatever is on the person of either of them, that belongs to them, with their oath.

Those who argued that whatever is suitable for men belongs to the man, and whatever is suitable for women belongs to the woman, mention a narration about 'Alī ibn Abī Ṭālib that the Messenger of

Allah ﷻ said, “Women’s belongings are for women, and men’s belongings are for men.”⁴⁶⁷

This is a fabricated, false narration. It is not permissible for anyone to narrate it except with a clear declaration of its fabrication. Suwayd ibn ‘Abd al-‘Azīz is known for lying, Abū Nūḥ is unknown, and al-Ḥaḍramī is the same.

The decisive evidence for the correctness of our statement is that the hand of the man and the hand of the woman are upon what is in the house in which they reside, or in their dwelling place, whatever it is. Neither of them has more right to it than the other, so it belongs to both of them, as it is in their joint possession, with their oaths. And we do not deny a woman’s ownership of weapons, and also not a man’s ownership of jewelry. And by Allah ﷻ is success.

Issue: The Child is Attributed in a Valid Marriage and in an Invalid Contract When Done in Ignorance

The child is attributed in a valid marriage, and in an invalid contract when entered into out of ignorance. But he is not attributed to one who knew of its invalidity. He is also attributed in valid ownership, and in ownership acquired through an invalid contract when done in ignorance, but not to one who knew of its invalidity. This is because the Messenger of Allah ﷺ attributed people to those from whom they were born, whether from women whom they had married, or from those whom they had owned in the Jāhiliyyah. And there is no doubt that among them were invalid marriages and invalid ownerships. And he ﷺ negated the children of fornication altogether, by his saying, “For the fornicator is the stone,” as clarified before, so what we said is established. As for the one who knowingly enters into an invalid marriage contract, or an invalid ownership contract, then he is a

⁴⁶⁷ Sunan Sa‘īd ibn Manṣūr 1497: Mawḍū‘

fornicator, upon whom the ḥadd is obligatory, and the child is not attributed to him. The child is attributed to the woman if she fornicates and becomes pregnant by it, but not to the man. And the child inherits from his mother and she inherits from him. This is because he ﷺ attributed the child to the woman in the case of li‘ān and disassociated him from the man. And the woman, in attributing the child to herself, is like the man, rather she is a stronger cause in this regard, because as we mentioned, the child is attributed to her whether from permissible intercourse or prohibited, for there is no doubt concerning her when it is established that she carried him. And by Allah ﷻ is success.

The Rulings of Ḥaḍānah (Raising the Child)

Issue: Who Has Right to Custody of the Child

The mother has more right to raise the young son and the young daughter until they reach menstruation, or wet dreams, or the growth of pubic hair along with discernment and physical soundness, whether she is a slave woman or free, whether she has married or not, whether the father has departed from that land or not. And the grandmother is not a mother. If the mother is not trustworthy in her religion or her worldly matters, then the matter of the boy or girl is considered in light of what is most protective and safest for them in religion, then in their worldly life. Wherever protection is found for them in both aspects, raising becomes obligatory there with the father, or the brother, or the sister, or the paternal aunt, or the maternal aunt, or the paternal uncle,

or the maternal uncle. A relative of kinship is more deserving than others in all cases, and religion is given precedence over worldly matters. If they are equal in uprightness of condition, then the order is: the mother and the grandmother, then the father and the grandfather, then the brother and the sister, then the nearer relative, then the next nearer. A non-Muslim mother has more right to the two young children during the period of breastfeeding. Then when they reach the age of understanding and sufficiency, then no task of raising the child is given to a non-Muslim and also not to a fāsiqah woman.

The decisive evidence for this is the saying of Allah ﷻ, “And those of kinship by womb are nearer to one another in the decree of Allah.” [al-Anfāl: 75]

As for the mother, the child is in her possession because he was in her womb and then in her lap during the period of breastfeeding according to the statement of Allah ﷻ, “And the mothers breastfeed their children for two complete years.” [al-Baqarah: 233].

So it is not permissible to remove the child or her from the place in which Allah ﷻ placed them without a text. And no text has ever come that if the mother marries, her right to raise the child is nullified, and also not that if the father departs from the land, the mother’s right to raise the child is nullified.

And Abū Hurayrah narrated, “A man said: ‘O Messenger of Allah ﷺ, who has the most right to my good companionship?’ He ﷺ said: ‘Your mother.’ He said, ‘Then who?’ He ﷺ said: ‘Your mother.’ He said, ‘Then who?’ He ﷺ said: ‘Your mother.’ He said, ‘Then who?’ He ﷺ said: ‘Your father.’”⁴⁶⁸

And it has come from Abū Hurayrah, “A man said: ‘O Messenger of Allah ﷺ, who has the most right to my good companionship?’ He ﷺ said: ‘Your mother, then your mother, then your mother, then your father, then the closest of kin, then the next closest.’”⁴⁶⁹

⁴⁶⁸ Ṣaḥīḥ Muslim 2548, 1: Ṣaḥīḥ

⁴⁶⁹ Ṣaḥīḥ Muslim 2548, 2: Ṣaḥīḥ

This is a clear naṣṣ obliging raising the child, because it is companionship.

As for giving precedence to religion, it is because of the saying of Allah ﷻ, “And cooperate in righteousness and piety, but do not cooperate in sin and transgression.” [al-Mā'idah: 2]

And His saying, “Be ever steadfast in justice.” [al-Nisā': 135]

And His saying, “And abandon open sin and private.” [al-Nisā': 135]

So whoever leaves the boy and the girl in a place where they are trained to hear kufr, to deny the Prophethood of the Messenger of Allah ﷺ, to abandon prayer, to eat during Ramaḍān, to drink wine, and to socialize in such a way that the rulings of kufr become easy for them, or to be in the company of those in whom there is no good, and to be immersed in corruption, then indeed he has assisted in sin and transgression, and has not assisted in righteousness and piety, and also not upheld justice, and also not abandoned outward and private sin. This is prohibited and sinful. But whoever removes them both from the place of what we have mentioned to a place where they are trained in prayer and fasting, learning the Qur'ān, the rulings of Islām, the recognition of the Prophethood of the Messenger of Allah ﷺ, and are warned against wine and indecencies, then indeed he has assisted in righteousness and piety, not in sin and transgression, has abandoned outward and inward sin, and has fulfilled the obligation in that.

As for the period of breastfeeding, we do not care because of the saying of Allah ﷻ, “And the mothers shall breastfeed their children for two complete years.” [al-Baqarah: 233]

And because children of this age, or even one or two years beyond it, have no understanding and no awareness of what they see, so there is no harm upon them in that.

If the mother is trustworthy in her religion and the father likewise, then she has more right than the father, because of the saying of the Messenger of Allah ﷺ that we mentioned. Then the grandmother is like the mother. But if the mother and the grandmother are not

trustworthy in her religion, or if she marries someone who is not trustworthy in his religion, and the father is trustworthy, then the father has more right, followed by the grandfather.

If none of those we have mentioned are trustworthy in religion, and the boy or girl has a brother trustworthy in his religion, or a sister trustworthy in her religion, then the trustworthy one has more right. And so it continues with the relatives after the siblings.

If there are two brothers, or two sisters, or relatives, who are equal in trustworthiness of religion, and equal in that matter, then if one of them is more protective of the child in worldly affairs, he is given precedence. If one is more protective in religion and the other more protective in worldly affairs, then raising the child goes to the one with religion, as we have mentioned before.

And because of the saying of Allah ﷻ, “Know that the life of this world is but play and amusement, and adornment, and boasting among you, and the accumulation of wealth and children; it is like rain whose growth pleases the tillers, then it withers, and you see it yellowed, then it becomes chaff.” [al-Ḥadīd: 20]

The meaning of protection in worldly matters is that one of them provides greater comfort in living, food, clothing, lodging, service, kindness, honoring, and care. This is an act of good toward the child, and it must be considered after religion, because of the saying of Allah ﷻ, “And show kindness to your parents and to those near of kin.” [al-Nisā’: 36]

If the sisters or brothers, or the relatives, are equal in all of this, and they agree among themselves that the boy or girl should remain with each of them for a period, then that is allowed for them. But if there is harm in that for the child, then if he was already under the care of one of them, he should not be removed from him. If they refuse, then the matter is decided by drawing lots.

As for our statement that the slave woman and the free woman are equal, it is because there is no naṣṣ in the Qur’ān and Sunnah about

differentiating between them. So it is ruling in a matter in which there is no naṣṣ, a shar' that Allah ﷻ has not permitted.

As for our statement, whether the father travels or does not travel, this is because there is no naṣṣ in the Qur'ān and also not the Sunnah, that the mother's raising falls away because of the father's travel. Whoever said that has introduced a false ruling, a takhṣīṣ of the Qur'ān and the Sunnah that we mentioned, and a contradiction to them by means of corrupt ra'ī. It is also poor consideration for the two young children and causes them harm, by obligating them to move, travel, and be removed from their mother and grandmother. This is an injustice that is not hidden, and an oppression that is beyond doubt.

As for our saying that the mother's right of taking care is not nullified by her marrying if she is trustworthy and the one she married is also trustworthy, this is because to the nuṣūṣ we mentioned, and the Prophet ﷺ did not make any difference if she marries.

And because of what Anas ibn Mālik narrated, "The Messenger of Allah ﷺ came to Madīnah without a servant. Abū Ṭalḥah took my hand and brought me to the Messenger of Allah ﷺ, and said: 'O Messenger of Allah, Anas is a clever boy, let him serve you. So I served him in travel and in residence.'"⁴⁷⁰

So this is Anas in the care of his mother, while she had a husband who is Abū Ṭalḥah and this was with the knowledge of the Messenger of Allah ﷺ.

And there is no difference, in taking care and protection, between a stepson under the mother's husband and a stepdaughter under the father's wife. Instead in most cases, the stepson is more compassionate and less harmful than the stepdaughter. In all of this, only religion is considered, then worldly benefit.

Those who prevent this argue with what Abū Salamah ibn 'Abd al-Raḥmān narrated, "There was a woman from the Anṣār married to a man from the Anṣār, who was killed on the Day of Uḥud, leaving her

⁴⁷⁰ Ṣaḥīḥ al-Bukhārī 2768: Ṣaḥīḥ

with a child from him. Her child's uncle and another man proposed to her through her father. Her father married her to the other man. She came to the Prophet ﷺ and said: My father has married me to a man whom I do not want, and he left out the uncle of my child who would have taken my child from me. So the Messenger of Allah ﷺ called for her father and said to him: 'You are the one who has no guardianship (in this matter). Go and marry your child's uncle.'⁴⁷¹

The answer: This is a mursal and there is in it someone majhūl, and such a narration is never a ḥujjah.

And they mention what is narrated by 'Abd Allāh ibn 'Amr, who said, "A woman was divorced by her husband and he wanted to take her child from her, so the Messenger of Allāh ﷺ said to her: 'You are more entitled to him as long as you do not marry.'⁴⁷²

And this is weak because it is through the weak silsilah 'Amr ibn Shu'ayb —» his father —» his grandfather which is a wijādah munqaṭi'ah and no one is allowed to claim with certainty that what 'Amr ibn Shu'ayb found from the books is what the grandfather wrote about the Prophet ﷺ.

If it is said, "Why do you not say that the maternal aunt is like the grandmother because of the saying of Allāh, exalted is He: 'And He raised his parents upon the Throne,' [Yūsuf: 100] and it was only his aunt and his father?"

We say: There has never come a naṣṣ from the Messenger of Allāh ﷺ that it was his aunt; that is only from the stories of the Children of Israel, which are evidently false, and perhaps she was his mother by breastfeeding, so they are two parents based on that.

If they mention what is narrated from Ja'far ibn Abī Ṭālib, "The daughter of my cousin and her maternal aunt are with me, then the Prophet ﷺ judged in her favor her maternal aunt, saying: 'The maternal aunt is like the mother.'⁴⁷³

⁴⁷¹ Al-Muṣannaf of 'Abd al-Razzāq 10304, 6/147: Ḍa'īf

⁴⁷² Sunan Abī Dāwud 2276: Ḍa'īf

⁴⁷³ Sunan Abī Dāwud 2280: Ḍa'īf

This is weak because Hānī' is majhūl and Hubayrah ibn Yarīm is not a thiqaḥ.

If they mention what is narrated from 'Abd al-Raḥmān ibn Abī Laylā, "That the Messenger of Allah ﷺ judged regarding the daughter of Ḥamzah, that she must be given to Ja'far, because her maternal aunt was with him."⁴⁷⁴

We reply: This is mursal, and there is no ḥujjah in a mursal narration.

If they mention what is narrated about Abū Hurayrah, the Messenger of Allah ﷺ said: "The maternal aunt is like the mother."⁴⁷⁵

We reply: This is too weak, because there is in it Yūsuf ibn Khālīd al-Samī, who is matrūk, accused of lying, and Abū Hurayrah al-Madanī and no one knows who he is.

If they mention what is narrated about 'Alī ibn Abī Ṭālib, "That he, his brother Ja'far, and Zayd ibn Ḥārithah disputed over the custody of the daughter of Ḥamzah. The Messenger of Allah ﷺ said: 'As for the girl, I judge that she be with Ja'far, for she is with her maternal aunt, and the maternal aunt is like the mother.'"⁴⁷⁶

This is weak because Muḥammad ibn al-Muthanna is weak, Nāfi' ibn 'Ujayr is majhūl and 'Abd al-'Azīz Muḥammad al-Darāwardī is weak.

If it is said, "Then why do you not say that he gives the choice once he reaches understanding, because of what is narrated about Abū Maymūnah, who said, 'I witnessed Abū Hurayrah give a boy the choice between his father and his mother and he said: 'The Prophet ﷺ gave the ghulām a choice between his mother and his father.'"⁴⁷⁷ And what is narrated about Abū Hurayrah: 'A woman came to the Prophet ﷺ, as her husband had divorced her, and she wanted to take her child. The Messenger of Allah ﷺ said: 'Draw lots over him.' Then the Messenger

⁴⁷⁴ Sunan Abī Dāwud 2279: Ḍa'īf

⁴⁷⁵ Al-Ḍu'afā' of al-'Uqaylī 4/510: Ḍa'īf

⁴⁷⁶ Sunan Abī Dāwud 2278 | Musnad al-Bazzār 891, 3/105: Ḍa'īf

⁴⁷⁷ Sunan ibn Mājah 2351

of Allah ﷺ said to the boy: ‘Choose whichever of them you wish.’ So he chose his mother.”⁴⁷⁸

If this is contemplated on, there is no ḥujjah in it for them; because there is not in it that if he chose his father, it would be ruled for him with that. And also we do not deny giving him a choice if one of the two parents is gentler with him. And there is no doubt that the Messenger of Allah ﷺ does not give choice between good and evil, and there is no doubt that he ﷺ only gives choice between two good things. And also, we are certain that he ﷺ does not leave anyone upon a choice that would bring corruption to his religion or his condition.

For indeed, a child’s choice for himself may be harmful, as he may incline towards ease and neglect. So there is no doubt that if he ﷺ gave the child a choice, then his choice was not carried out except that he chose what he was obligatory to choose and nothing else is possible at all.

If they mention what is narrated from ‘Uthmān al-Battī —» ‘Abd al-Ḥamīd al-Anṣārī —» his father —» his grandfather, “Indeed, when he embraced Islām and his wife refused to embrace Islām, a young son of theirs who had not yet reached maturity came. Then the Prophet ﷺ gave him the choice between them, so he chose his mother. Then he ﷺ said: ‘O Allah, guide him!’ – and the child went to his father.”⁴⁷⁹

We say: This narration is never authentic; because the narrators of it differed. ‘Uthmān al-Battī said, “‘Abd al-Ḥamīd al-Anṣārī, —» his father —» his grandfather.”⁴⁸⁰ And another time he said, “‘Abd al-Ḥamīd ibn Yazīd ibn Salamah, that his grandfather accepted Islām.” And another time he said, “‘Abd al-Ḥamīd ibn Salamah —» his father

⁴⁷⁸ Musnad Aḥmad 9771, 15/480

⁴⁷⁹ Al-Mujtaba 3495: Ḍa‘īf

⁴⁸⁰ Ma‘rifah al-Ṣaḥābah of ibn Mandah 700-701

—» his grandfather.”⁴⁸¹ And ‘Īsā said, “‘Abd al-Ḥamīd ibn Ja‘far informed me from my father from my grandfather Rāfi‘ ibn Sinān.”⁴⁸²

And all of these are majhūl narrators, and it is not permissible at all to give choice between a kāfir and a Muslim.

Issue: When they Reach the Age of Discernment

When a son or a daughter reaches the age of discernment and sanity, they are more entitled to themselves, and they can reside wherever they want. But, if there are not safe from them committing a sin, such as consuming khamr, tabarruj, or engaging in corruption, then it is permissible for the father, or someone else from among the ‘aṣabah, or for the ruler, or the neighbors, to prevent them from that, and to settle them in a place where they are supervised in their affairs.

The decisive evidence of the correctness of our statement: The saying of Allah ﷻ, “No soul earns except against itself.” [al-An‘ām: 164]

And the Messenger ﷺ approving the statement of Salmān, “Give every possessor of right his due.”⁴⁸³

There is no meaning in differentiating between male and female in this matter, and also not in considering the marriage of the daughter, because that is ruling what that Allah ﷻ has not permitted. Indeed, many virgins are more upright and sound in judgment than those who are married. By the necessity of sensory perception, everyone knows that marriage does not add intellect that was not there before that, and also not righteousness that was absent.

As for when corruption or disobedience appears from either the son or daughter, then preventing that becomes obligatory, due to the

⁴⁸¹ Sunan Sa‘īd ibn Manṣūr 2/140

⁴⁸² Sunan Abī Dāwūd 2244

⁴⁸³ Ṣaḥīḥ al-Bukhārī 1978, 6139; Ṣaḥīḥ

statement of Allah ﷻ, “Be persistently standing firm in justice, witnesses for Allah.” [al-Nisā’: 135]

And His statement ﷻ, “And cooperate in righteousness and piety, but do not cooperate in sin and aggression.” [al-Mā’idah: 2]

And His statement ﷻ, “And let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and it is they who will be successful.” [Āl ‘Imrān: 104]

Issue: When the Father or Mother are in Need of the Help of the Son or Daughter

If the father and the mother are in need of the service/help of their son or daughter, whether married or unmarried, then it is not permissible for the son or daughter to depart, or to neglect the parents in any way. Their right is more binding than the right of a husband or wife. But if the father and mother are not in necessity of that service, then the husband has the right to take his wife wherever he wishes, as long as there is not in that harm upon her parents.

The decisive evidence of this is the saying of Allah ﷻ, “Be grateful to Me and to your parents.” [Luqmān: 14]

So Allah ﷻ has associated gratitude to them with gratitude to Him.

And His saying, “But if they strive against you to associate with Me that of which you have no knowledge, do not obey them, but accompany them in the world with kindness.” [Luqmān: 15]

So Allah ﷻ has obligated accompanying the parents with kindness even if they are kuffār calling to kufr. Whoever neglects them has failed to accompany them in the world with kindness.

And His saying ﷻ, “And be good to parents. If one or both of them reach old age in your care, do not say to them ‘uff,’ nor rebuke them, but speak to them with noble words.” [al-Isrā’: 23]

And Allah said, “And lower to them the wing of humility out of mercy.” [al-Isrā’: 24]

And we have already mentioned the narration of the man who said to the Messenger ﷺ, “Who among the people is most deserving of my good companionship?” He said: “Your mother, then your mother, then your father.”⁴⁸⁴

And his saying ﷺ, “Uqūq to the parents is among the major sins.”⁴⁸⁵

A group opposed this and argued with weak narrations and we have already clarified many of these narrations before.

From them is what is narrated about Anas ibn Mālik, “That a man went out to war and left his wife in an upper chamber. And her father was below (in the lower part of the house), and he fell ill. Her husband had ordered her not to leave her home. So her father complained, and she sought permission from the Messenger of Allah ﷺ concerning the matter. He said to her: ‘Fear Allah and obey your husband.’ Then her father died, and she did not attend him. The Messenger of Allah ﷺ said: ‘Indeed Allah has forgiven your father because of your obedience to your husband.’”⁴⁸⁶

This is weak as Yūsuf ibn ‘Aṭīyyah ibn Bāb al-Ṣaffār is matrūk.

And what is narrated about Ibn ‘Umar, “The Messenger of Allah ﷺ was asked about the right of the man over his wife. He said words among which were: ‘That she does not leave his house except with his permission. If she does that, then the angels of Allah, the angels of mercy, and the angels of punishment curse her until she returns to her home or repents.’ It was said: ‘O Messenger of Allah, even if he wrongs her?’ He said: ‘Even if he wrongs her.’”⁴⁸⁷

⁴⁸⁴ Ṣaḥīḥ Muslim 2548, 1: Ṣaḥīḥ

⁴⁸⁵ Ṣaḥīḥ al-Bukhārī 2653

⁴⁸⁶ Musnad al-Hārith ibn Abī Usāmah 499: Ḍa‘īf

⁴⁸⁷ Musnad al-Ṭayalīsī 2063: Ḍa‘īf

This is weak as Layth ibn Abī Sulaym is weak, and far be it from Allah that His Messenger ﷺ would permit sin. This addition is fabricated without doubt.

And what is narrated from Buraydah, “That the Messenger of Allah ﷺ said: ‘If I were to order a human being to prostrate to another human being, I would have ordered the woman to prostrate to her husband, in magnification of his right.’”⁴⁸⁸

This is weak because of the weakness of ‘Ubayd ibn Ishāq, Ḥabbān ibn ‘Alī al-‘Anazī and Ṣāliḥ ibn Ḥayyān al-Qurashī are all weak.

And what is narrated about Mu‘ādh ibn Jabal, from the Messenger of Allah ﷺ, the exact words as before, except that there is not in it, “In magnification of his right.”⁴⁸⁹

This is weak because of its inqitā’ as Abū Zabyān who is Ḥuṣayn ibn Jundab al-Janbī did not meet Mu‘ādh ibn Jabal.

And what is narrated from Anas, from the Messenger of Allah ﷺ, “If it were fitting for a human to prostrate to a human, I would have commanded the woman to prostrate to her husband because of the greatness of his right upon her.”⁴⁹⁰

This is weak as Khalaf ibn Khalīfah is a weak mukhtaliṭ

And what is narrated about Qays ibn Sa’d, from the Messenger of Allah ﷺ, “If I were to order anyone to prostrate to anyone, I would have ordered women to prostrate to their husbands because of the right Allah has given them over their wives.”⁴⁹¹

This is weak as Sharīk al-Nakha‘ī is weak.

And what Surāqah ibn Ju‘shum narrated that he heard the Messenger of Allah ﷺ say, “If I would order anyone to prostrate to

⁴⁸⁸ Sunan al-Dārimī 1464: Ḍa‘īf

⁴⁸⁹ Musnad Aḥmad 21986, 36/311-312: Ḍa‘īf

⁴⁹⁰ Musnad Aḥmad 12614, 20/64-65: Ḍa‘īf

⁴⁹¹ Sunan Abī Dāwud 2140: Ḍa‘īf

anyone, I would have ordered the woman to prostrate to her husband.”⁴⁹²

This is weak because of its inqīṭā’ between ‘Alī ibn Rabāḥ and Surāqah ibn Mālīk Ju‘shum as he did not hear this from him⁴⁹³.

And from them is a narration from ‘Abd Allāh ibn Miḥṣan that his aunt informed him, that she mentioned about her husband to the Messenger of Allah ﷺ. So he ﷺ said to her, “Look to how you are with him, for indeed he is your Paradise or your Hellfire.”⁴⁹⁴

This is weak as Ḥuṣayn ibn Miḥṣan does not have Ṣuḥbah, and ‘Abdullah ibn Miḥṣan and Ḥuṣayn ibn Miḥṣan are both majhūl.

And what is narrated about ‘Ā’ishah, “I asked the Prophet ﷺ: Which of the people has the greatest right over a woman? He said: ‘Her husband.’ I said: ‘Which of the people has the greatest right over a man?’ He said: ‘His mother.’”⁴⁹⁵

This is weak as Abū ‘Utbah is majhūl no one knows who he is.

And what is narrated about Abū Sa‘īd, from the Prophet ﷺ, who said, “The right of the husband over his wife is such that if he had a sore and she were to lick it, she would not fulfill his right.”⁴⁹⁶

This is weak as Rabī‘ah ibn ‘Uthmān is majhūl.

And what is narrated about Ibn ‘Abbās that the Messenger of Allah ﷺ said, “Shall I not inform you about your women who are from the people of Paradise? The loving, childbearing, often returning [to her husband], who, if she harms or is harmed, comes until she takes the hand of her husband, then says: ‘By Allah, I will not taste bone until you are pleased.’”⁴⁹⁷

This is weak because of the weakness of Khalaf ibn Khalīfah.

⁴⁹² Al-Mu‘jam al-Kabīr 6590, 7/129: Ḍa‘īf

⁴⁹³ Musnad Aḥmad 17585, 17586, 29/125

⁴⁹⁴ Al-Sunan al-Kubra 8913, 8914, 8920, 8/148, 8/158-186: Ḍa‘īf

⁴⁹⁵ Al-Sunan al-Kubra 9103, 8/254: Ḍa‘īf

⁴⁹⁶ Al-Sunan al-Kubra 5365, 5/176: Ḍa‘īf

⁴⁹⁷ Al-Sunan al-Kubra 9094, 8/251: Ḍa‘īf

And what is narrated from ‘Abd Allāh ibn ‘Amr ibn al-‘Āṣ, that the Messenger of Allah ﷺ said, “Allah does not look at a woman who does not show gratitude to her husband while she has no independence from him.”⁴⁹⁸

This is weak because of its inqitā’ as al-Ḥasan heard nothing from ‘Abdullah ibn ‘Amr and even if it would be authentic then its meaning is established as gratitude to every doer of good is obligatory.

And what is narrated about Abū Hurayrah, that the Prophet ﷺ was asked, “Who are the best of women?” He said: “The one who obeys her husband when he orders, pleases him when he looks at her, and safeguards him in herself and his wealth.”⁴⁹⁹

This is weak as Muḥammad ibn ‘Ajlān had ikhtilāṭ with the narrations of Abū Hurayrah.

And it has been authentically narrated from the Messenger of Allah ﷺ, “There is no obedience in disobedience. Obedience is only in that which is ma‘rūf.”⁵⁰⁰

⁴⁹⁸ Al-Sunan al-Kubra 9086, 8/239: Ḍa‘īf

⁴⁹⁹ Al-Sunan al-Kubra 8912, 8/184: Ḍa‘īf

⁵⁰⁰ Ṣaḥīḥ Muslim 1840, 39: Ṣaḥīḥ

The Rulings of Irdā' (Breastfeeding)

Issue: The Obligation Upon Every Mother to Breastfeed Her Child

It is obligatory upon every mother whether she is free or a slave, whether she is in the bond of a husband or in the ownership of a master, or whether she is free of both, and whether her child is ascribed to the one from whose fluid he was born or is not ascribed to him: to suckle her child, whether she likes it or dislikes it, even if she were the daughter of the caliph. She is compelled to do that, except if she is divorced.

If she is divorced, she is not compelled to suckle her child from the one who divorced her, except if she herself wants to do that. Then she has the right, whether the father likes it or dislikes it, and whether the one who marries her afterward likes it or dislikes it.

If she and the father of the suckling child dispute, the father is ordered to hire another woman to suckle his child, with no other way, except if the child will not accept any breast other than hers. Then she is compelled at that point, whether she likes it or dislikes it, and whether her husband, if she has one, likes it or dislikes it.

If the father of the suckling child dies, or becomes bankrupt, or is absent in such a way that he cannot be reached, the mother is compelled to suckle him, unless she has no milk, or her milk harms the child. Then in that case, another woman is sought to suckle him, and the father is demanded with the expense if he is alive and has wealth.

If she is not divorced, but remains in his bond, or the marriage has been annulled, or it was through an invalid contract entered into out of ignorance, and the father and she both agree that another woman suckle him, and the child accepts a breast other than hers, then that is

permissible. If the father wants that, but she refuses except to suckle him herself, then she has the right to that.

If she wants that another woman suckles him, and the father refuses, then she has no right to that, and she is compelled to suckle him, whether the child accepts a breast other than hers or not, except if she has no milk, or her milk harms him. Then in that case, the father must arrange another woman to suckle his child. If the child does not accept any breast except that of his mother, she is compelled to suckle him if she has milk that does not harm him.

If the infant has no father, whether due to invalid intercourse through *zinā*, or rape, or *li'ān*, or in a way such that he is not ascribed to the one from whose fluid he was born, or because his father has died, then the mother is compelled to suckle him, unless she has no milk, or her milk harms him, or if his mother has died or is absent such that she cannot be reached. Then another woman suckles him, whether the suckling infant has wealth or not. If he has a father or a mother, and the father wishes to wean him without the mother's agreement, or the mother wishes to wean him without the father's agreement, none of them has the right to that before the completion of two years, whether that would harm the child or not.

If they both want together to wean him before two years, then if that causes harm to the child due to illness, or weakness of his constitution, or because he does not accept food, then it is not permissible for them to do that. But if there is no harm to the child in that, then they are allowed to do that.

If they both want to continue suckling him after two years, then they are permitted to do that. But if one of them wants after the two years to wean him, and the other refuses, then if weaning would harm the child, it is not permissible to wean him.

And the same applies if they both agree to wean him. But if there is no harm to the child in weaning him after two years, then whichever of the parents wants to wean him after the completion of two

years, has the right to do that. This is the right of the suckling infant, and the obligation is upon the father and the mother in suckling him.

As for what is obligatory upon the mother in that: if the child is not ascribed in lineage to the one from whose fluid he was born, or if his father is dead, or absent such that he cannot be reached, and the suckling child has no inheritor, then suckling is upon the mother, and she has no claim against anyone for her suckling him.

If the child is under his the father's protection through a valid marriage, or through a valid ownership of a slave girl, then upon the father is their maintenance or their clothing only, as was the case before, and nothing more.

And if she, the mother, is in other than his protection, if she was his umm walad and he emancipated her, or the marriage was annulled after being valid without divorce, but by one of the causes we mentioned earlier that annul a valid marriage, or if she was one who was copulated falsely through a corrupt contract done in ignorance, from which the child is still attributed to his father, or if he divorced her with a revocable divorce while the child was still nursing, then in all of these cases, she has the right upon the father to maintenance and clothing only, and nothing more.

If the father is poor, she is obliged to nurse the child and she has no right upon the poor father.

If the father is absent but has wealth and refuses, he is held accountable for maintenance and clothing whenever he has access to wealth.

If she is divorced thrice and completes her waiting period from the revocable divorce by delivering the child, then she is entitled from the father only to the wage for nursing him.

If she is pleased with the customary wage of her likes, then the father is compelled to provide that, whether he wants it or not and his claim that he has found someone else to nurse the child for less, or even without payment, is not considered.

If she refuses except if she is given more than the customary wage of her likes, and the father refuses except to give the customary wage, then this is quarrel (ta'āsur). At that point, the father can seek another woman to nurse his child, except if the child refuses any breast other than hers, or the father only finds a woman whose milk is harmful to the child, or the father has no wealth, in which case the mother is compelled to nurse the child, and both she and the father are compelled to provide her the customary wage if he has wealth; if not, then nothing is obligatory on him.

All that we have mentioned as obligatory upon the father, whether in nursing, wages, sustenance, or clothing, is obligatory upon him, whether the child has wealth or not, whether she is a young girl married off by her father or not, unlike the case of maintenance for a weaned boy or girl.

If the father dies, then all that we have mentioned as obligatory upon the father, of clothing, maintenance, or wages, and the infant has an heir, it is then upon the heir of the infant, divided equally among them and not according to the shares of inheritance. The mother is included among them, as is the husband if her father had married her off, whether the child has wealth or not. This is unlike his clothing and sustenance once he eats food.

And if has no heir, his nursing falls upon the mother, whether she inherits or not, and she has no right due to that from the wealth of the infant, unlike her maintenance, which is obligatory from his wealth if he has any, and she has no wealth.

If she (the mother) dies, or falls ill, or her milk harms the child, or she has no milk, and she has no wealth, then the obligation falls upon the bayt al-māl of the Muslims. If the bayt al-māl withholds, then it falls upon the neighbors, and the judge compels them to do that. And by Allah, the Exalted, is success.

The decisive evidence for everything we have mentioned is *manṣūṣ* in the words of Allah, “And the mothers must their children for two complete years, for whoever desires to complete the nursing

period. And upon the father of the child is their provision and clothing according to what is acceptable. No soul is burdened beyond its capacity. No mother shall be harmed because of her child, nor father because of his child. And upon the heir is the like of that. But if both desire weaning by mutual consent and consultation, then there is no blame upon them. And if you wish to have your children nursed by a wet nurse, there is no blame upon you if you give what you promised according to what is acceptable. And fear Allah, and know that Allah is Seeing of what you do.” [al-Baqarah: 233]

And in His saying, “O Prophet, when you divorce women, divorce them for [the commencement of] their waiting period and keep count of the waiting period, and fear Allah your Lord. Do not turn them out of their houses, nor should they [themselves] leave, unless they commit a clear immorality. And those are the limits of Allah. And whoever transgresses the limits of Allah has certainly wronged himself. You do not know—perhaps Allah will bring about after that a [different] matter}. Then, when they have reached the end of their term, either retain them according to what is acceptable or part with them according to what is acceptable. And bring to witness two just men from among you and establish the testimony for Allah. That is instructed to whoever believes in Allah and the Last Day. Then, when they have reached the end of their term, either retain them according to what is acceptable or part with them according to what is acceptable. And bring to witness two just men from among you and establish the testimony for Allah. That is instructed to whoever believes in Allah and the Last Day.” [al-Ṭalāq: 1-2]

This is without doubt the description of a revocable divorce. Then Allah, mentioned the waiting period by menstrual cycles and months.

Then He, said, “Lodge them [in a section] of where you dwell according to your means and do not harm them in order to oppress them. And if they should be pregnant, then spend on them until they deliver. Then if they nurse for you, give them their payment, and confer

among yourselves in the acceptable way; but if you disagree, then another woman will nurse for him. Let a man of wealth spend from his wealth, and he whose provision is restricted—let him spend from what Allah has given him. Allah does not charge a soul except [according to] what He has given it. Allah will bring about, after hardship, ease.” [al-Ṭalāq: 6–7]

And we have mentioned earlier in this book of ours that His saying, the Exalted, “House them [the divorced women] where you dwell, according to your means, and do not harm them in order to oppress them. And if they are pregnant, then spend upon them until they deliver their burden,” [al-Ṭalāq: 6], has been clarified by the ḥadīth of Fāṭimah bint Qays: that Allah only intended by this those divorced with a revocable divorce, not those divorced thrice. So everything that we have said is *manṣūṣ* in the mentioned verses without *taʿwīl* and we, if Allah wills, will mention the clarification of this point by point. And there is no might and no power except with Allah, the Most High, the Most Great.

As for our saying at the beginning of the issue, that it is obligatory upon every free woman or slave woman, whether in the bond of a husband or in the ownership of a master, or free of both, whether her child is attributed to the one from whose fluid he was generated or not, that she breastfeed her child whether she likes it or not, even if she is the daughter of the caliph, and she is compelled to that, because of the saying of Allah, the Exalted, “And the mothers breastfeed their children for two complete years, for whoever wishes to complete the nursing.” [al-Baqarah: 233]

And this is general, and it is not permissible for anyone to specify from it anything except what an established *naṣṣ* has specified; otherwise, it is a lie against Allah.

If it is said, “This verse is a *khavar* not an *amr*.”

We say: This is more severe upon you, since Allah has said it in the manner of a *khavar*, so whoever opposes His *khavar* strives in

declaring the khabar false, and there is in this of falsehood as you can see.

As for our saying that except if she is divorced. If she is divorced, then she is not compelled to breastfeed her child from the one who divorced her, except if she herself wants to. If she chooses that, then that is for her, whether the one who divorced her wants it or not, whether she has a husband who wants it or refuses. It is because of the saying of Allah in Sūrat al-Ṭalāq after mentioning the women in waiting periods, “And if they breastfeed for you, then give them their payment, and consult together in a fair manner. But if you encounter difficulties, then another woman shall breastfeed for him.” [al-Ṭalāq: 6].

So Allah did not specify one who has a husband over another, and He did not give choice in that to the father or to the husband; instead He made the breastfeeding referred back to the mothers.

As for our saying that if she and the father of the infant are unable to agree, have a quarrel: the father is ordered to have another woman nurse his child, with no other way, because of the saying of Allah, in the mentioned verse, “But if you encounter difficulties, then another woman shall breastfeed for him.” [al-Ṭalāq: 6]

And the address (khiṭāb) is to the fathers and the mothers by the naṣṣ of the Qur’ān.

As for our saying that except if the child will not accept anyone other than his mother’s milk, then she is compelled at that time to breastfeed him, whether she likes it or not, and whether her husband likes it or not, whether her father likes it or not, it is because of the saying of Allah, Mighty and Majestic, “Indeed, those who kill their children foolishly without knowledge have certainly lost.” [al-An‘ām: 140]

And because of His, “And cooperate in righteousness and piety, but do not cooperate in sin and aggression.” [al-Mā’idah: 2]

And His saying, the Exalted, “No mother must be harmed by her child, nor any child by his mother, and upon the heir is the same,” [al-Baqarah: 233]

And this is the real harm.

And it is authentically narrated from the Messenger of Allah ﷺ, “He who does not show mercy to people will not be shown mercy by Allah.”⁵⁰¹

And as for our saying that if the father of the infant dies, goes bankrupt, or is absent in such a way that he cannot provide: the mother is also compelled to breastfeed him, except if the child will not accept her milk, or if she has no milk, or if her milk is harmful to him in which case another woman must be arranged to nurse him. And as we mentioned before that the father must go along with this if he is alive and has wealth, because it is an obligation upon him in that matter.

As for our saying if she is not divorced but is in his protection (married), or if the marriage has been annulled by him, or from a contract invalid by ignorance, or if she is an umm walad who has been emancipated, and the father and she agree that another nurse can feed the child and they accept someone other than her milk, that is permissible, because of the saying of Allah, “And if you wish to have your children nursed by others, there is no sin upon you.” [al-Baqarah: 233]

And this is an address of Allah for those who have children who are the fathers and the mothers without doubt.

As for our saying that if the father wants this (breastfeeding by the mother) and the mother refuses except to breastfeed him herself, then that is her right. But if she wants that another woman nurses him and the father refuses, she does not have that right and is compelled to breastfeed him herself; because the wills of the father and the mother did not coincide regarding the nursing, and Allah, Mighty and Majestic, has not made that except by their combined will.

⁵⁰¹ Ṣaḥīḥ Muslim 2319, 66: Ṣaḥīḥ

As for our saying that except if she has no milk, or if she has milk that would harm the child, then it becomes the father's obligation to arrange another woman to nurse him. If the child will accept only his mother's milk in all of this, she is compelled to breastfeed him, as long as her milk does not harm him, as Allah, Mighty and Majestic, says, "No mother is harmed by her child, nor any child by his mother," [al-Baqarah: 233], along with all that we have mentioned in this chapter.

As for our saying that if he has no father because the invalidity of intercourse from adultery, rape/coercion, or the oath of *li'ān*, or from being unable to reach the one from whom he was born, or if his father has already died, the mother is compelled to breastfeed him, by Allah's saying, "No mother is harmed by her child," [al-Baqarah: 233], and because of what we have previously mentioned related to this verse in this chapter.

As for our saying that except if she has no milk, or if her milk would harm the child, or if his mother has died, or is absent in such a way that it is impossible for her to nurse him, another woman must nurse him, whether or not the infant has wealth. This is because of Allah's saying, "And cooperate in righteousness and piety, but do not cooperate in sin and aggression," [al-Mā'idah: 2] and what we have previously said regarding the obligation of mercy.

As for our saying that if he has a father or a mother and the father wishes weaning before the mother's consent, or the mother wishes weaning before the father's consent, this is not permissible for either of them to enforce before the completion of the two full years, whether harm is present or not in the weaning.

If both want to wean before the two years and there is no harm to the infant, they can do that. But if doing that would cause harm to the infant because of illness, weakness of his build, or refusal to accept food, then it is not permissible. This is because of Allah's saying, "Mothers breastfeed their children for two full years for whoever wishes to complete the nursing." [al-Baqarah: 233]

And because of His saying, “But if they both desire weaning by mutual consent and consultation, there is no blame upon them.” [al-Baqarah: 233]

As for considering harm to the infant, this is because of what we mentioned regarding Allah’s saying, “No mother shall be harmed by her child, nor any child by his mother,” [al-Baqarah: 233] along with what we have already explained concerning this verse.

As for our saying that if the mother or the father want to continue nursing the infant after the two full years, they may do that, because no text has prohibited this, and it is not part of a spouse’s right if she has and. Nursing is a bond with her child, and Allah has made the maintenance of kinship obligatory, so no one can prevent what Allah has ordered, as the Messenger of Allah ﷺ said, “There is no obedience in disobedience.”

As for our saying that if the child is not attributed from the fluid of the one from whom he was born, or if the father is deceased or absent and unable to be reached, and there is no heir for the infant, then breastfeeding falls entirely on the mother, and she has no claim on anyone else for the nursing, by Allah’s saying, “Mothers breastfeed their children for two full years for whoever wishes to complete the nursing.” [al-Baqarah: 233]

And there is no father here and also no heir so it is obligatory upon her only.

As for our saying that if she is under the care of the father in a valid marriage or through slavery of her master, then her maintenance and clothing are upon the father as before, and nothing more, according to Allah’s saying, “And upon the father is the provision and clothing of the mother in a fair manner.” [al-Baqarah: 233]

As for our saying that if she is not under his care, whether she is an umm walad whom he emancipated or the marriage was annulled after being valid without divorce, or if it was a union void due to ignorance but the child is connected to the father, or if he divorced her with a revocable divorce while the child is an infant, in all of these

cases, the father is only responsible for maintenance and clothing in a fair manner, and this applies to the divorced woman during her waiting period.

If the father is poor, she is tasked to nurse the child, and she has no claim upon the poor father. If he is absent but possesses wealth, she is supported with maintenance and clothing whenever he is able, and likewise if he refuses while having wealth, because of Allah's saying, "And upon the father is the provision and clothing of the mother in a fair manner." [al-Baqarah: 233]

And if Allah has ordained this for her, it becomes a debt upon him if he has wealth. And if he has no wealth, then according to Allah's saying, "Allah does not task a soul beyond that which He has given it." [at-Talaq: 7]

And as he is not tasked, it is not permissible to follow up if he afterwards becomes able with what he was before not able to. But once he becomes able then from that moment onwards and the breastfeeding continues, he is tasked from that moment onwards.

As for our saying that if she has been divorced three times, or has completed the waiting period ('iddah) of a revocable divorce through childbirth, she has no claim upon the father for anything beyond the third divorce, the last of the three, or the completion of her 'iddah from a revocable divorce, except for the breastfeeding wage alone.

This is because of Allah's saying, "And if they are pregnant, spend on them until they give birth; and if they breastfeed for you, give them their due payment." [at-Talaq: 6]

And we have previously clarified that this naṣṣ is only for those divorced revocably, because of the narration of Fāṭimah bint Qays.

And as for our saying that if she agrees to a payment equivalent to the average wage, then the father is obliged to comply, whether he likes it or not. And his saying then, "I can find someone to nurse for less or without payment," is not considered or cared about, because of Allah's saying, "And if they breastfeed for you, give them their due

payment, and consult one another in kindness; and if you quarrel, then another nurse for him.” [at-Talaq: 6]

Allah has made the wage obligatory, except in cases of quarrel. And the word ta‘āsur (quarrel) in Arabic which is the language in which the Qur‘ān was revealed is an action of two people. If she is satisfied with the wage that Allah has ordained for her as ma‘rūf (good and known), she is not in ta‘āsur, so she is entitled to her rightful wage, consulted upon the ma‘rūf.

As for our saying that if she is only satisfied with more than the average wage and the father insists on the average wage, this is ta‘āsur. Then the father can seek another wet nurse for his child, either for the same wage, a lesser wage, or even without payment, if he finds one.

As for our saying that except in the case where the child will not accept anyone’s milk other than hers, or the father finds only a wet nurse whose milk is harmful to the infant, or if she is unavailable, or if the father has no wealth, the mother is then obliged to nurse the child, and both she and the father are obliged to the fair wage if he has wealth. Otherwise, there is no obligation on him. This is because of Allah’s saying, “And if you find difficulty, then another shall nurse for him. Let him who has means spend from his wealth; and he whose provision is restricted, let him spend from what Allah has given him. Allah does not burden a soul beyond what He has given it. Allah will bring ease after hardship.” [at-Talaq: 6-7]

And because of what we have mentioned from the saying of Allah the Exalted, “No mother shall be harmed because of her child, nor any father because of his child,” [al-Baqarah: 233] and because of what we have mentioned from the obligation of mercy.

As for our saying that everything that we have mentioned as being obligatory upon the father with about breastfeeding, whether it be a wage, clothing, or maintenance, it is obligatory upon him, whether the infant has wealth or not, whether the nursling is female or not, whether her father has married her off or not.

This is unlike the case of maintenance for a weaned boy or girl, because Allah has made obligatory everything we have mentioned, and he did not exclude the case if the infant has wealth, and also not if the nursling was a young girl with a husband, Allah said, “And your Lord is never forgetful.” [Maryam: 64]

And Allah has obliged him spending on everyone from his wealth, and upon the husband for his wife. And it is not permissible to abandon Allah’s order for another, because He said, “Had it been from other than Allah, they would have found much contradiction in it.” [al-Nisā’: 82]

As for our saying that if the father dies, then everything we have mentioned as being obligatory upon the father, from maintenance, clothing, or wage, falls upon the heir(s) of the infant, if he has heirs, upon all of them together, not according to the proportion of their inheritance shares if he would die.

And the mother is included among them if she would inherit him if he would die, and the husband of the nursing girl is likewise included if he would inherit her if she would die, whether the infant is male or female, has wealth or not.

This is unlike their maintenance and clothing after weaning, for Allah says, “And upon the father is their provision and clothing according to what is right. No soul is burdened except to its capacity. No mother shall be harmed because of her child, nor any father because of his child. And upon the heir is the like thereof.” [al-Baqarah: 233]

If it is said, “The only obligation upon the heir is to not cause harm.”

We say: Yes, and among the forms of harm is leaving the infant to be lost. And how is this possible when His saying, “The like thereof,” [al-Baqarah: 233] is agreed upon by ahl ul-‘ilm from the Arabic language as being a reference (ishārah) to what is more far away, not to what is nearest. It is then established that it is an ishārah to provision and clothing with certainty.

And we have already clarified this in the issue about maintenance (nafaqah), so that suffices. And there is no ḥujjah for whoever opposes this.

As for our saying that if he has no heir, then his breastfeeding is upon the mother, whether she inherits him or not, and she has no right because of that in the wealth of the suckling child, if he possesses wealth. This is different from his maintenance after weaning, if he possesses wealth, because of the saying of Allah ﷻ, “Let not the mother be harmed by her child.” [al-Baqarah: 233]

And His saying ﷻ, “And the mothers breastfeed their children for two complete years.” [al-Baqarah: 233]

As for our saying that if she dies, or becomes sick, or her milk harms the child, or she has no milk, and no wealth, then the breastfeeding is upon the Bayt al-Māl. If the Bayt al-Māl withholds, then it is upon the neighbors; the ruler compels them to it. This is because of the saying of the Messenger of Allah ﷺ, “Whoever leaves behind a debt or dependents, then it is to me or upon me.”

And because of the saying of Allah ﷻ, “And do good to the parents, and to the relatives, and the orphans, and the needy, and the near neighbor, and the distant neighbor, and the companion.” [al-Nisā’: 36]

And this is from the obligatory iḥsān that has been ordered. And with Allah ﷻ is success.

Issue: A Man Has Two Wives, and One of Them Breastfed Him With Milk That Resulted From a Pregnancy of His.

Whoever has two wives, or two female slaves, or a wife and a slave, and one of them breastfeeds him with milk that comes from a pregnancy of him making a male infant that becomes maḥram for her and the other breastfeeds him with milk that comes from a pregnancy of him in the same manner, then it is not permissible for any of these

two to marry the other at all. And a woman that breastfeeds a male becomes maḥram to him, because she is his mother through breastfeeding. And her daughters are maḥram to him, because they are his sisters, whether they were born before him or after him through breastfeeding. And her sisters are also maḥram to him, because they are his maternal aunts through breastfeeding. And her mothers are maḥram to him, because they are his grandmothers. And the sisters of the wife who breastfed him with milk resulting from his pregnancy are maḥram to him, because they are his paternal aunts through breastfeeding. And His own mothers are maḥram to him because they are his grandmothers. And likewise whoever his wife breastfeeds with milk that comes from a pregnancy of him is maḥram to him, because she is his daughter. And likewise it is prohibited for a man to marry the woman who breastfed his wife. And the ruling for woman who breastfeeds his wife is like the ruling for his own daughter whom she gave birth to, and he must not combine between two sisters through breastfeeding.

The decisive evidence of this: Allah Almighty says regarding what is prohibited from women, “And your mothers who breastfed you, and your sisters through breastfeeding.” [al-Nisā’: 23]

And the saying of the Messenger of Allah ﷺ, “What is prohibited through breastfeeding is prohibited through lineage.”⁵⁰² From this, everything we have mentioned and what we have not mentioned falls under it and by Allah is success.

Issue: Laban al-Faḥl

This is the milk in the woman by the man’s intercourse with her as mentioned before. And this milk makes a maḥram, and it is as we clarified before: if one wife of a man breastfeeds a male child, and his

⁵⁰² Ṣaḥīḥ Muslim 1444, 2: Ṣaḥīḥ

other wife breastfeeds a female child, then one of them becomes mahram to the other.

We look into this and find what ‘Ā’ishah narrated, “That Aflah, the brother of Abū al-Qu‘ays, sought permission to enter upon her after the order of hijab. Abū al-Qu‘ays was the father of ‘Ā’ishah through breastfeeding. ‘Ā’ishah said: ‘So I said, “By Allah, I will not permit Aflah until I ask permission of the Messenger of Allah ﷺ, for Abū al-Qu‘ays is not the one who breastfed me, but his wife breastfed me.’ When the Messenger of Allah ﷺ entered upon me, I said: ‘O Messenger of Allah, indeed Aflah, the brother of Abū al-Qu‘ays, came seeking permission to enter upon me, but I disliked to permit him until I asked you.’ Then the Prophet ﷺ said: ‘Permit him to enter.’”⁵⁰³

And it is narrated about ‘Ā’ishah that she said, “My paternal uncle came after the veil had been commanded and sought permission to enter upon me, but I did not permit him. Then the Prophet ﷺ came and said: ‘Permit him, for he is your uncle.’ I said: ‘O Messenger of Allah, but only the woman breastfed me, and the man did not.’ He said: ‘May your right hand be dusty! Permit him, for he is your uncle.’”⁵⁰⁴

And it is narrated about ‘Ā’ishah that she said, “Aflah ibn Qu‘ays sought permission to enter upon me, and I refused to permit him. He sent to me saying: ‘Indeed, I am your uncle; the wife of my brother breastfed you.’ But I refused to permit him. Then the Messenger of Allah ﷺ came, and I mentioned this to him, and he said: ‘Let him enter upon you, for he is your uncle.’”⁵⁰⁵

This is a narration that is not allowed to oppose and it is an addition to what is in the Qur‘ān.

⁵⁰³ Ṣaḥīḥ Muslim 1445, 5: Ṣaḥīḥ

⁵⁰⁴ Musnad Aḥmad 24102, 40/121-122: Ṣaḥīḥ

⁵⁰⁵ Ṣaḥīḥ Muslim 1445, 10: Ṣaḥīḥ

Issue: A Man Marries Two Women, Then a Woman Breastfeeds Both of Them With a Breastfeeding that Makes a Maḥram

If a man were to marry two women, and then a woman breastfed them both with a nursing that establishes prohibition, both of them become prohibited to him and their marriages annulled with faskh, as by that nursing they become two sisters, or an aunt and the daughter of her brother, or an aunt and the daughter of her sister, or among the categories of women prohibited for him. This is because the prohibition occurred for both of them together, so none of them had more right to annulment than the other. And likewise is if he had entered upon them and then one of them breastfed the other with a nursing that establishes a maḥram, there is no difference in the ruling. But if he had not entered upon both of them and one of them breastfed the other with a nursing that establishes a maḥram, then the marriage of the one who became a mother to the other is annulled, while the marriage of the one who became her daughter remains valid. This is because Allah ﷻ said, “And your stepdaughters who are under your care from the women you have consummated marriage with; but if you have not consummated with them, then there is no blame upon you.” [al-Nisā’: 23]

So she became the daughter of his woman with whom he had not consummated and who was not in his care, so her marriage remained valid. As for the other, she became among the mothers of his wives, and she is by that prohibited to him completely. And by Allah ﷻ we are granted success.

Issue: The Description of Breastfeeding that Establishes a Maḥram

As for the description of the nursing that establishes a maḥram, it is only what the suckling infant directly extracts from the breast of the

nursing woman with his mouth. As for one who is given a woman's milk to drink from a vessel, or it is milked directly into his mouth and he swallows it; or it is mixed with bread, or in food, or poured into his mouth, or into his nose, or into his ear, or injected into him, all of that does not establish any prohibition, even if that were his nourishment for his entire lifetime.

The decisive evidence for this is the saying of Allah, "Your mothers who nursed you and your sisters through nursing (milk-suckling)." [al-Nisā': 23]

And the Messenger of Allah ﷺ said, "What makes a maḥram through breastfeeding makes prohibited/maḥram through lineage."⁵⁰⁶

So Allah ﷻ and His Messenger ﷺ did not prohibit marriage in this except by means of irḍā', raḍā'ah, and raḍā' only. And nothing is called irḍā' except when the breastfeeding woman places her breast into the mouth of the infant so that he suckles from it, it is said, "Arḍa'at-hu, turḍi'uhu, irḍā'an." And it is not called raḍā'ah or raḍā' except when the infant himself takes the breast into his mouth and suckles it, it is said, "Raḍi'a, yarḍa'u, raḍā'an, wa-raḍā'atan."

As for everything else that we have mentioned, none of it is called irḍā', and also not raḍā'ah, and also not raḍā'. It is only milking, feeding, watering, drinking, eating, swallowing, injecting, nasal feeding, or dripping, and Allah has not made any of that what prohibits making a maḥram.

If they say, "We make qiyās of those manners to raḍā' and irḍā'."

The answer: Every single qiyās is false as clarified entirely in another place.

Some people argue to include means other than direct breastfeeding with what is narrated from the Messenger of Allah ﷺ that he said, "Indeed, suckling (raḍā'ah) is only from hunger."⁵⁰⁷

⁵⁰⁶ Ṣaḥīḥ Muslim 1444, 1: Ṣaḥīḥ

⁵⁰⁷ Ṣaḥīḥ al-Bukhārī 2647, 5102

So they say, “As he ﷺ made the suckling that makes maḥram that which is used to remove hunger, then this is found also in drinking and eating.”

The answer: This is not a ḥujjah for them and is instead a ḥujjah for us against them; because he ﷺ only ruled it making a maḥram by the suckling that counters with that hunger, and he did not rule the making of maḥram by anything else. So no making maḥram takes place by what is used to counter hunger, whether food, drink, medication through the throat, or anything else except if it is breastfeeding as the Prophet ﷺ, Allāh said, “Whoever transgresses the limits of Allah, they are from the oppressors.” [al-Baqarah: 229]

Issue: The Infant or Adult Suckles From the Milk of a Dead Woman, Insane Woman, or Intoxicated Woman Five Times

If an infant or adult child suckles from the milk of a dead woman, an insane woman, or an intoxicated woman five times, the taḥrīm occurs by that, because it is a valid suckling.

Al-Shāfi‘ī said, “Nursing does not occur from the milk of a dead woman, because it is impure.”⁵⁰⁸

This is truly astonishing, that he says about the milk of a believing woman that it is impure, when it has been authentically narrated from the Prophet ﷺ that he said: “The mu‘min does not become impure.”⁵⁰⁹ And we know that the believer is pure in both life and death. A woman’s milk is some part of her and some of the pure is pure, except if a text would specify it out from purity then that must not be transgressed. Then he rules the milk of a disbelieving woman impure

⁵⁰⁸ Al-Umm 5/33

⁵⁰⁹ Ṣaḥīḥ al-Bukhārī 283: Ṣaḥīḥ

and prohibits it, while that is part of her, while Allah says, “The mushrikūn are only najis.” [al-Tawbah: 28]

And part of the impure is without doubt impure.

If it is said, “You say that the milk of a disbelieving woman is without doubt impure, yet you allow suckling from a disbelieving woman.”

We say: Because Allah allowed marriage to the kitābiyyah and made it obligatory for the mother to nurse suckle her child. Allah knows that there will be children from them, and Allah said, “And your Lord is never forgetful.” [Maryam: 64]

But we say that suckling is not permissible from women who are not kitābiyyah, because they are not permitted for marriage or for intercourse by means of slavery. So, their milk remains impure and Allah grants success.

Then we say: If the milk of the nursing woman is mixed with visible blood from the child, or other forbidden substances, it still makes maḥram just as if nothing had mixed with it. As we clarified in the Book of Ṭahārah from that if an impure or prohibited substance mixes with something pure or prohibited, the pure remains pure, the impure remains impure, the permissible remains permissible, and the prohibited remains prohibited. What makes a maḥram is the milk itself, not what mixed with it, and everything has its ruling and Allah grants success. And the milk of a polytheistic woman is impure because of her impure religion; if she becomes Muslim, all of it becomes pure.

Issue: No Maḥram is Established Except by Five Sucklings

No Maḥram is established except through five separate sucklings (raḍa'āt) or five separate sucks (maṣṣāt). Or five between a suck and suckling as long as that suck is what prevents anything from hunger, otherwise it is nothing and does not establish a maḥram.

Then we look at what those who claim it is ten sucklings argue with, and they mention what 'Ā'ishah narrated, "That Sahlah bint Suhayl came to the Prophet ﷺ and said to him: 'Indeed Sālim was with us as you know, and we considered him as a child, and he used to enter upon me. But when Allah, Mighty and Majestic, revealed concerning him and others like him, I noticed the change in the face of Abū Ḥudhayfah when he saw him entering upon me.' He ﷺ said: 'Breastfeed him ten sucklings, then he may enter upon you however he wishes, for he is your son.'"⁵¹⁰

This is weak because of the weakness of Muḥammad ibn Ishāq isnād, and also it is not free from two manners for which is no third. The first is that ibn Ishāq made a mistake in it, because others more reliable than ibn Ishāq narrated this narration from al-Zuhrī, and he is ibn Jurayj, who said in it, "Breastfeed him five sucklings," as we will mention later by the will of Allah. Or it is the case that it is preserved, then both the narration of ibn Ishāq is ṣaḥīḥ and the narration of Ibn Jurayj is ṣaḥīḥ, making them two separate narrations. If that is the case then ten sucklings are abrogated, as we will clarify by the will of Allah. So this narration falls, because it is by necessity a mistake or abrogated and there is no other way.

Then we look at the evidence of those who prohibited with three sucklings but not less than that, and we find that they rely on the well-known narration narrated through multiple turuq from 'Ā'ishah that the

⁵¹⁰ Musnad Aḥmad 26315, 43/342: Ḍa'īf

Messenger of Allah ﷺ said, “One suck does not prohibit, and also not two sucks.”⁵¹¹

Ibn Abī Mulaykah met ‘Ā’ishah so heard this from her, and also Ibn al-Zubayr from her, and he narrated it in this way. He is a thiqah, reliable, and well-known.

It has also come from ‘Ā’ishah that the Messenger of Allah ﷺ said, “A quick snatch does not prohibit, and also not two quick snatches.”⁵¹²

It has also come from al-Zubayr from the Prophet ﷺ, said: “One suck does not prohibit, and also not two sucks, and also not one insertion, and also not two insertions.”⁵¹³

This is weak as Muḥammad ibn Dīnār is weak.

It has also come from the Prophet ﷺ, “One suck does not prohibit, and also not two sucks.”⁵¹⁴

Ibn al-Zubayr heard it from his father and from his maternal aunt, the Mother of the Believers, so he narrated it from each of them. He also had companionship with the Prophet ﷺ. Otherwise, let the one who insists on falsehood, repels the truth, and prefers his ra’ī over what is authentically established from the Messenger of Allah ﷺ, tell us: which of the narrators of these narrations does he accuse?

It is also authentically narrated from Umm al-Faḍl, that the Messenger of Allah ﷺ said, “One suck does not make a maḥram, and also not two sucks.”⁵¹⁵

And from Umm al-Faḍl that the Messenger of Allah ﷺ said, “One suckling does not make a maḥram, and also not two suckling, and also not one suck, and also not two sucks.”⁵¹⁶

⁵¹¹ Ṣaḥīḥ Muslim 1450, 17: Ṣaḥīḥ

⁵¹² Al-Mujtaba 3311: Ṣaḥīḥ

⁵¹³ Al-Sunan Al-Kubra 5433, 5/198: Ḍa‘īf

⁵¹⁴ Al-Mujtaba 3309: Ṣaḥīḥ

⁵¹⁵ Ṣaḥīḥ Muslim 1451, 18: Ṣaḥīḥ

⁵¹⁶ Ṣaḥīḥ Muslim 1451, 20: Ṣaḥīḥ

So they say, “These are authentic narrations, narrated by the Mother of the Believers, Umm al-Faḍl, al-Zubayr, Abū Hurayrah, and Ibn al-Zubayr, all from the Messenger of Allah ﷺ, and they reach the level of tawātur. So they are an exception from the generality of the words of Allah, ‘And your mothers who nursed you and your sisters through nursing.’ [al-Nisā’: 23] And everything else what remains then establishes prohibition, a maḥram.”

The answer: They have spoken the truth in that these narrations are of the highest authenticity. But only if nothing else had been narration on the matter, the matter would be as they say. But other narrations have indeed come, which we will mention, if Allah wills.

Then we look at the ḥujjah of those who do not limit what establishes a maḥram by suckling and say that the amount must be that which relieves hunger.

They mention what is narrated from ‘Ā’ishah, that the Messenger of Allah ﷺ said to her, “Look to your brothers through suckling, for suckling is only from hunger.”⁵¹⁷

We also mentioned earlier about Abū Hurayrah, from the Prophet ﷺ, that he said, “Nothing from suckling prohibits except what splits the intestines.”

These are two narrations of the highest authenticity, and the ḥujjah through them establishes.

Then we look at the saying of those who say, “Less than five sucklings do not make a maḥram.”

They mention what ‘Ā’ishah said, “The Qur’ān was revealed that nothing prohibits except ten sucklings. Then later it was revealed as five known ones.”⁵¹⁸

This is the wording of Yahyā ibn Sa‘īd. And in the wording of ‘Abd al-Raḥmān she said, “It was among what was revealed from the

⁵¹⁷ Ṣaḥīḥ Muslim 1455, 32: Ṣaḥīḥ

⁵¹⁸ Sunan ibn Mājah 1942

Qur'ān, then abrogated: Nothing prohibits from suckling except ten sucklings. Then later it was revealed as five known ones.”⁵¹⁹

And from ‘Ā’ishah, “It was among what was revealed from the Qur’ān: Ten sucklings prohibit. Then they were abrogated by five known ones that prohibit. And the Messenger of Allah ﷺ passed away while they were still among what was recited from the Qur’ān.”⁵²⁰

And from ‘Ā’ishah, “That Abū Ḥudhayfah had adopted Sālim, who was the freedman of a woman from the Anṣār, just as the Messenger of Allah ﷺ had adopted Zayd. In the Jāhiliyyah, when a man adopted another, the people called him by his name and he inherited from his inheritance, until Allah revealed: ‘Call them by their fathers; that is more just in the sight of Allah. But if you do not know their fathers, then they are your brothers in religion and your clients.’ [al-Aḥzāb: 5] So they were returned to their fathers. And whoever’s father was not known, he was a mawla and a brother in religion. Then Sahlah came and said: ‘O Messenger of Allah, we used to see Sālim as a son who would stay with me and Abū Ḥudhayfah and he would see me uncovered. But Allah has revealed concerning him what you know.’ So the Messenger of Allah ﷺ said: ‘Breastfeed him five sucklings.’ So he became like her son through suckling.”⁵²¹

These are two narrations of the utmost authenticity, with the greatness of the transmitters and their trustworthiness. No one is allowed to oppose them.

And this narration through the riwāyah of ibn Jurayj clarifies the mistake in the narration of ibn Ishāq in this narration, in which he mentioned ten sucklings or it is abrogated. Because it is possible that the Prophet ﷺ gave her the fatwā of ten before the revelation of prohibition with five, then gave her the fatwā of five after its revelation, and there may not have been between the two rulings except very few time.

⁵¹⁹ Sunan Abī Dāwud 2062 | Al-Muwatta’ 1780, 2/127: Ṣaḥīḥ

⁵²⁰ Ṣaḥīḥ Muslim 1452, 24-25: Ṣaḥīḥ

⁵²¹ Al-Muṣannaf of ‘Abd al-Razzāq 13887, 7/460: Ṣaḥīḥ

Then we look at what those who say that prohibition occurs through both little and much suckling. We find that they argued with the saying of Allah, “And your mothers who nursed you and your sisters through nursing.” [al-Nisā’: 23]

They say, “Allah mentioned here as general and did not specify.”

Then they mention authentic narrations, such as the saying of the Prophet ﷺ about the daughter of Ḥamzah, “She is the daughter of my brother through suckling.”⁵²²

And His ﷺ saying about the daughter of Abū Salamah: “She is the daughter of my brother through suckling.”⁵²³

And His ﷺ saying to ‘Ā’ishah about her paternal uncle through suckling, “He is your uncle, so let him enter upon you.”⁵²⁴

And regarding the uncle of Ḥafṣah, “I see so-and-so (meaning her paternal uncle through suckling).”⁵²⁵

And from ‘Ā’ishah, from the Prophet ﷺ, “Breastfeed him,”⁵²⁶ it has come without specifying any number.

They also mentioned his ﷺ statement, “Suckling is only from hunger, and it does not make a maḥram except that which splits the intestines.”⁵²⁷

So they say, “He ﷺ did not specify any number.”

They also mentioned a narration of no benefit from Umm al-Faḍl bint al-Ḥārith, who said, “The Messenger of Allah ﷺ was asked about what prohibits through suckling. He said: ‘One suckling, or two sucklings.’”⁵²⁸

⁵²² Ṣaḥīḥ al-Bukhārī 2645, 5100: Ṣaḥīḥ

⁵²³ Ṣaḥīḥ al-Bukhārī 5101: Ṣaḥīḥ

⁵²⁴ Ṣaḥīḥ al-Bukhārī 5239: Ṣaḥīḥ

⁵²⁵ Ṣaḥīḥ al-Bukhārī 2646: Ṣaḥīḥ

⁵²⁶ Ṣaḥīḥ Muslim 1453, 29: Ṣaḥīḥ

⁵²⁷ Sunan al-Tirmidhī 1152: Ṣaḥīḥ

⁵²⁸ Al-Mudawwanah of ‘Abdullah ibn Wahb 2/295: Ḍa‘īf

As for this narration, it is a narration that is ill and fabricated; Maslamah ibn ‘Alī is weak, and it is not narrated from him. People have rejected Ibn Wahb’s narration from him. Then he mentioned it from someone unnamed.

As for the established narrations we mentioned earlier, and the āyāt, all of that is the truth. But when the narration of the thiqāt came which we mentioned, that one suckling or two sucklings do not make a maḥram, and that only five sucklings make a maḥram, these narrations are additions to what is in that verse. In those narrations, the riwāyah of ibn Jurayj in the ḥadīth of Abū Ḥudhayfah, “Breastfeed him five sucklings,”⁵²⁹ is an addition to the narrations we mentioned, and Ibn Jurayj is a thiqah; it is not permissible to leave his addition which he was alone in. Abandoning an addition narrated by a thiqah is a mistake that is not permissible, because it is a narration from the Messenger of Allah ﷺ. Whoever opposes it has opposed his ﷺ order, and this is not permissible.

They also objected using the narrations which mention five prohibited sucklings, narrated from Ṭāwūs, that he said, “There was for the wives of the Prophet ﷺ making a maḥram by sucklings, and for other women known sucklings, then it was abandoned later.”⁵³⁰

And regarding the saying of those who claim, “Nothing makes a maḥram from suckling less than seven, then it became five,” Ṭāwūs said about this, “This was like that then after that an order came with it making a maḥram with one.”

This is a saying of Ṭāwūs’s he did not attribute it to a companion let alone to the Messenger of Allah ﷺ, it is not a ḥujjah.

They also say, “The narrator’s claim that it was from the Qur’ān when he ﷺ died is rejected, and it is a violation regarding the Qur’ān. No one is allowed to permit the omission of anything of the Qur’ān after the death of the Messenger of Allah ﷺ.”

⁵²⁹ Ṣaḥīḥ Muslim 1452, 25: Ṣaḥīḥ

⁵³⁰ Al-Muṣannaf of ‘Abd al-Razzāq 13914, 7/467

We say: It is not as you assume the only meaning of ‘Abd Allah ibn Abī Bakr’s saying in his narration for is as you mentioned, meaning that the Prophet ﷺ died while it is from what is recited with the Qur’ān. So jarr letters change some for others, or from what is recited from the Qur’ān which is invalidated to be written in the muṣḥaf and its ruling remains such as the verse about stoning in the same manner, so their mentioned objection is invalidated.

They object to the established narration in which is, “No one suck and also no two sucks and also not one suckling and also not two sucklings.”

They say about it, “It is a narration that is muḍṭarib in its isnad, as it is sometimes from ‘Ā’ishah, and sometimes from al-Zubayr.”

We say: So what? This strength to the narration, when it is narrated through multiple routes, no one objects to narrations in this manner except the ignorant, it is an objection without any decisive evidence.

So it is then obligatory to take these narrations. And as he ﷺ said that, “No one suckling and also no two sucklings, and also no one suck and also no two sucks make a maḥram,” we know that the suck (maṣṣah) is different from suckling (raḍā‘ah).

So from that we say: The depleting of the one suckling the infant from the two breasts, if connected, counts as one suckling. And the suck does not make a maḥram except if it is known to have satisfied some hunger, and it is not certain that it reaches the intestines. And that a little of that which does not satisfy hunger, and whose arrival to the intestines is not certain, does not make a maḥram anything at all. And with Allah, the Exalted, is success.

Issue: The Suckling of an Adult Makes a Maḥram

The suckling of an adult makes a maḥram even if he is an old man, it establishes a maḥram just as the suckling of a child makes a maḥram, without difference.

And among the wonders of this world is that some deluded ones say about the verse, “And the mothers suckle their children for two complete years.” [al-Baqarah: 233]

They say, “This indicates that there are two years deficient, and he pointed to that with their number of the solar count.”

This saying combines contradiction of Allah ﷻ and denial of what is evident to the senses.

As for contradicting Allah ﷻ, He said, “Indeed, the number of months with Allah is twelve months in the Book of Allah, the day He created the heavens and the earth; of them, four are ḥurum (sacred). That is the right dīn.” [al-Tawbah: 36]

So Allah ﷻ made it clear that the number of months with Him are those among which are four sacred months, and that this has been established in the Book of Allah since the day He created the heavens and the earth, and that this is the upright religion. It is impossible for the sacred months to be other than the Arabic lunar months. Whoever opposes this has opposed the upright religion, and attributed to Allah ﷻ falsehood by claiming that He ordered reckoning the two years according to the foreign solar count.

As for contradicting what is evident, there is only a difference of twenty-two days between the two solar years reckoned by the sun and their orbit, and the two lunar years reckoned by the moon. The claim of an increase up to the completion of two months, then we do not know from where it came. Declaring something permissible or prohibited in the religion of Allah ﷻ based on this is not allowed.

As for those who make a limit for this suckling making a maḥram to what occurs in the cradle, this is also a claim with no

evidence: not from the Qur'ān, and also not from the Sunnah, so this statement falls.

As for those who make a limit of to what occurs in childhood, the childhood extends until reaching puberty, as before that no hudud or obligations are binding. And this is a limit that is not established by the Qur'ān and also not the Sunnah.

As for those who limit it to weaning, they argued with the saying of Allah ﷻ, “So if they both desire weaning, by mutual consent between them and consultation, then there is no sin upon them.” [al-Baqarah: 233]

This is not a ḥujjah for them about prohibiting it, as there is no mention about its prohibition in this verse, and there is not them being pleased with the weaning a prohibition of a child breastfeeding afterwards there is only in it cessation from spending the obligatory maintenance on the father in suckling. And the child no longer needing suckling does not stop the prohibition with his suckling if he suckles as there has not come for that anything from the Qur'ān and Sunnah.

And they argue with what is narrated from Umm Salamah from the Messenger of Allah ﷺ said, “Nothing from suckling makes a maḥram except that which penetrates the intestines through the breast, and that is before weaning.”⁵³¹

This narration is munqaṭi', because Fāṭimah bint al-Mundhir did not hear from Umm Salamah. Because she was older than her husband Hishām by twelve years, and Hishām was born in the year 60 AH, so Fāṭimah's birth, by this was in the year 48 AH. Umm Salamah died in the year 59 AH, when Fāṭimah was still a young child who did not meet her. Then how could she have preserved anything from her? And she did she hear anything from her father's aunt, 'Ā'ishah while she was in her care. Her farthest extent of hearing was from her grandmother, Asmā' bint Abī Bakr al-Ṣiddīq.

⁵³¹ Sunan al-Tirmidhī 1152: Ḍa'īf

They also tumult with a narration about ‘Alī, from the Prophet ﷺ, “There is no suckling after weaning.”⁵³²

This is weak because Juwaybir is weak, al-Ḍaḥḥāk is weak, and Ḥarām ibn ‘Uthmān is weak. So everything they cling unto has fallen away. And with Allah ﷻ is success.

And all the statements fell away except the view of those who regarded the two years, and the view of those who did not set any limit at all.

So we look at the saying of those who consider it two years, and we find that they argue with the saying of Allah ﷻ, “His carrying (gestation) and his weaning amount to thirty months.” [al-Aḥqāf: 15]

And His saying, “And the mothers shall breastfeed their children for two full years for whoever desires to complete the nursing period.” [al-Baqarah: 233]

And His saying, “His mother carried him with weakness upon weakness, and his weaning is in two years.” [Luqmān: 14]

So they say, “Allah ﷻ has decisively stated that the weaning of the infant is two years, and that his suckling is two complete years for whoever wishes to complete the suckling.”

They also say, “So there is no suckling at all after the two years, as the suckling has been completed, and when the suckling ceases, its ruling of making a maḥram ceases.”

The answer: Allah ﷻ has spoken the truth, and upon us is to stop where He ﷻ has set the limit. If there had been no other text, then it would be sufficient to cling unto these texts. But in this matter there has indeed come as ‘Ā’isha narrated, “Sahlah bint Suhayl came to the Prophet ﷺ and said: ‘O Messenger of Allah, I see the face of Abī Ḥudhayfah disturbed by the presence of Sālim while he is his servant?’ The Messenger of Allah ﷺ said: ‘Breastfeed him.’ She said: ‘And how can I breastfeed him while he is an adult man?’ The Messenger of Allah ﷺ smiled and said: ‘I know that he is an adult man.’”⁵³³

⁵³² Al-Muṣannaf of ‘Abd al-Razzāq 11450, 6/416 | 13899, 7/464: Ḍa‘īf

⁵³³ Ṣaḥīḥ Muslim 1453, 26: Ṣaḥīḥ

And as ‘Ā’isha narrated, “Sālim, the freedman of Abī Ḥudhayfah, was with Abī Ḥudhayfah and his family in their house. Sahlah bint Suhayl came to the Prophet ﷺ and said: ‘Sālim has reached the age that men reach and understands what men understand, and he enters upon us. I think there is something in the heart of Abī Ḥudhayfah about him?’ The Prophet ﷺ said to her: ‘Breastfeed him, and what is in the heart of Abī Ḥudhayfah will be removed.’”⁵³⁴

And as Zaynab bint Umm Salamah narrated, “Umm Salamah said to ‘Ā’isha: ‘The young boy who I do not like entering upon me comes to you?’ ‘Ā’isha said: ‘Do you not have in the Messenger of Allah ﷺ a good example? The wife of Abī Ḥudhayfah said: ‘O Messenger of Allah, Sālim enters upon me and he is a man and in the heart of Abī Ḥudhayfah there is something about him?’ The Messenger of Allah ﷺ said: ‘Breastfeed him until he is a maḥram to you.’”⁵³⁵

And from ‘Ā’isha, “Sahlah bint Suhayl ibn ‘Amr came to the Prophet ﷺ and said: ‘Sālim, who is called the son of Abī Ḥudhayfah, enters upon me while we are in a small house. Allah has revealed in His Book: ‘Call them for their name.’ [al-Aḥzāb: 5].’ The Prophet ﷺ said to her: ‘Breastfeed Sālim, and he will be a maḥram for you.’”⁵³⁶

Al-Zuhrī said, “Some of the wives of the Messenger of Allah ﷺ said: ‘We do not know perhaps this was a permissibility specific for Sālim.’ And ‘Ā’isha continued to issue rulings that the ruling of making a maḥram by breastfeeding remains after weaning until her death.”

These narrations remove the difficulty and clarify Allah’s intended meaning in the mentioned āyāt: that the breastfeeding which is completed for the full two years, or by the mutual consent of the parents before the two years, if they see it beneficial for the infant, is what obliges maintenance for the woman that breastfeeds, and which the parents are obliged to comply with whether they like it or dislike it.

⁵³⁴ Ṣaḥīḥ Muslim 1453, 27: Ṣaḥīḥ

⁵³⁵ Ṣaḥīḥ Muslim 1453, 29: Ṣaḥīḥ

⁵³⁶ Al-Muṣannaf of ‘Abd al-Razzāq 13885, 7/459

By my life, there is sufficiency in the āyah regarding this, for He ﷻ said, “And the mothers shall breastfeed their children for two complete years — for whoever desires to complete the suckling. And upon the father is their provision and clothing according to what is customary.” [al-Baqarah: 233]

So Allah ﷻ ordered the mothers to breastfeed the child for two years, and in this there is no making maḥram of breastfeeding after that, and also not that the making of a maḥram ends upon completion of the two years.

And Allah saying, “And your mothers who nursed you, and your sisters through suckling.” [al-Nisā’: 23]

Allah did not say in two years, and also not any specific period beyond what other āyāt have mentioned. In general it is not allowed to make takhṣīṣ except by a naṣṣ that clarifies that it is specific, not by conjecture or assumption without evidence.

These narrations have reached the level of tawātur as narrated by the women of the Messenger of Allah ﷺ, as we have mentioned, including Sahlah bint Suhayl among the Muhājirāt, and Zaynab bint Umm Salamah. It was then narrated from them by the Tābi‘īn: al-Qāsim ibn Muḥammad, ‘Urwah ibn al-Zubayr, and Ḥumayd ibn Nāfi‘. It was narrated then narrated from them by al-Zuhrī, Ibn Abī Mulaykah, ‘Abd al-Raḥmān ibn al-Qāsim, Yaḥyā ibn Sa‘īd al-Anṣārī, and Rabī‘ah. It was then narrated from them by Ayyūb al-Sikhtiyānī, Sufyān al-Thawrī, Sufyān ibn ‘Uyaynah, Shu‘bah, Mālik, Ibn Jarīr, Shu‘ayb ibn Abī Ḥamzah, Yūnus ibn Yazīd, Ja‘far ibn Rabī‘ah, Sulaymān ibn Bilāl, Ma‘mar, and others. It was narrated from these people as a large, widespread mass transmission, and it is a naql al-kāffah; no one differs about this and also not about its authenticity.

So the only objection left would be if someone said, “It is specific to Sālim,” as some of the wives of the Messenger of Allah ﷺ said. Let it be known to whoever relies on this that it is a mere conjecture from them.

And that is how it came in the ḥadīth that the women said, “We see this only as specific to Sālim, we do not know.” So this is a conjecture without doubt, and conjecture cannot invalidate the established Sunnah. Allah ﷻ said, “Indeed, conjecture does not avail against the truth.” [Yūnus: 36]

And how vast is the difference between Umm Salamah’s reliance on her own choice, and ‘Ā’isha’s reliance upon the established Sunnah. Her statement to her, “Do you not have in the Messenger of Allah ﷺ a good example?” and Umm Salamah’s silence indicates her return to the truth from her previous ihtiyāt.

Others have said, “This is abrogated by the abrogation of adoption.”

This is certainly false, because it is not permissible for anyone to say regarding an established naṣṣ, “This is abrogated,” except by an established naṣṣ that clearly clarifies it without ambiguity. Then how when Sahlah said to the Messenger of Allah ﷺ, “How can I breastfeed him while he is an adult?” is a clear indication that this happened after the revelation of the mentioned āyāt. And we know with certainty that if it had been specific to Sālim, or that it is abrogated by the ruling of adoption that it would have been clarified, just as it was clarified to Abū Burdah regarding al-Jadh’ah, when he was told, “It suffices you, and it does not suffice anyone after you.”⁵³⁷

Some who do not fear Allah ﷻ in what they speak say, “How can it be permissible for an adult to suck the breast of an ajnabiyyah woman?”

This is a mere objection against the Messenger of Allah ﷺ, who ordered it. Do you not hear the Prophet ordering it? No one is unable to object in this manner against most orders of the Prophet to invalidate it as they wish.

And the saying of the Messenger of Allah ﷺ, “Breastfeeding is from hunger,” is a ḥujjah for us; because an adult has the same effect

⁵³⁷ Ṣaḥīḥ al-Bukhārī 955: Ṣaḥīḥ

from breastfeeding in removing hunger as a child, so it is general for every breastfeeding when five feedings are completed, as the Messenger of Allah ﷺ ordered.

So it is established that ‘Ā’isha, may Allah be pleased with her, was entered upon by an adult after she breastfed him, and he became, in his adulthood, a mahram through breastfeeding. We bear witness by Allah ﷻ and are certain that Allah ﷻ did not permit anyone to violate the secret of the Messenger of Allah ﷺ, that is not permitted for him, because He ﷻ said, “And Allah will protect you from the people.” [al-Mā’idah: 67]

So we are certain and affirm that breastfeeding an adult establishes a mahram, and there is not in others abstaining from entering upon the women with this breastfeeding anything rejected, because it is permissible for women not to enter upon them those that are permissible for them to enter upon. And by Allah ﷻ is the success.”

Issue: If a Woman Becomes Pregnant by Someone Whose Child is Attributed to Him, and Milk Flows in Her Breasts

If a woman becomes pregnant by someone whose child is attributed to him, and milk flows in her breasts, then she gives birth and afterward her husband divorces her or he dies leaving her, and then she marries another man, or if she was a slave-girl and another master comes to own her, then whatever child she breastfeeds (with that milk) is a child in relation to the first (husband/master), not the second. But if she then becomes pregnant from the second, and the milk continues to flow, then it still belongs to the first, except if the milk changes and then stabilizes (according to the new pregnancy). Because if it changes, then the ruling of the first is nullified and it belongs to the second. And all praise belongs to Allah, Lord of the worlds.

وَصَلَّى اللّٰهُ عَلَى مُحَمَّدٍ وَآلِهِ وَصَحْبِهِ وَسَلَّمَ